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Business and human rights

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Business and Human Rights

Addressing the challenges of respecting, protecting and fulfilling the human rights of project-affected peoples

Lidewij van der Ploeg

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Business and Human Rights

Addressing the challenges of respecting, protecting and
 fulfilling the human rights of project-affected peoples

Proefschrift

Ter verkrijging van de graad van doctor aan de
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The whole of science is nothing more than a refinement of everyday thinking

Einstein

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Chapter 1

Introduction to the PhD



Photo 1. A translator explains the concern of a woman to a company staff member in the resettlement site, Tete, Mozambique, 2013

Introduction to the PhD

Human rights and business: what is the problem?

In 2011, the United Nations Human Rights Council endorsed the *United Nations Guiding Principles on Business and Human Rights* (UNGP) (United Nations, 2011). The endorsement of the UNGP confirmed that, regardless of government obligations, all companies have a responsibility to respect human rights wherever they operate. To operationalize and comply with this responsibility, companies are expected to identify all human rights risks and impacts in relation to their project activities and business partners, and they have to avoid, mitigate, and provide remedy for adverse human rights impacts (United Nations, 2011).

A foundational principle of the corporate responsibility to respect human rights is that, “*Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved*” (United Nations, 2011, p. 13). Business enterprises need to implement their responsibility to respect human rights through adequate policies and processes, by: “(a) *A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute*” (United Nations, 2011, p. 16). After the endorsement of the UNGP, the need to observe corporate human rights responsibilities has become explicitly acknowledged by hundreds of multinational business enterprises (businessandhumanrightsresourcecentre, 2017), especially those from the mining, oil and gas sector.

In international law, only governments are regarded as the primary duty bearers in respecting, protecting and fulfilling human rights. Business enterprises, through their objective of profit maximization, are argued to contribute to the realization of human rights by creating jobs, providing goods and services that satisfy basic needs, and maintain or improve people’s quality of life. However, it has been observed that the inability of governments to effectively monitor and manage corporate activities regarding their negative impacts on the environment

and on people, forms a major underlying cause for corporate related human rights abuses (United Nations, 2011; Ruggie, 2013).

An early attempt to establish non-voluntary corporate human rights responsibilities was undertaken in 2003 by developing the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (UNESCO, 2003). *The Norms* failed primarily due to lack of support from the business community (Ruggie, 2007, 2013). Subsequently, Professor John Ruggie was appointed as the ‘Special Representative on Human Rights and Transnational Corporations and other Business Enterprises’ to progress the discussion on the issue and to consider an alternative strategy. In 2008, Ruggie proposed the ‘Respect, Protect and Remedy Framework’ (Ruggie, 2008) that clarified the responsibilities of business and obligations of governments with regard to respecting, protecting and fulfilling human rights. The Human Rights Council approved the Framework and extended the mandate of Professor John Ruggie to further operationalize the Framework. Eventually, after 7 years of multiple research projects and extensive consultations between governments, civil society groups, international NGOs, business enterprises and other organization, in 2011, Ruggie issued the UNGP, which was then endorsed by the Human Rights Council (Ruggie, 2013).

Ruggie (2008, p. 3) established that, *“the root cause of the business and human rights predicament today lies in the governance gaps created by globalization – between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge”*.

What are these ‘wrongful acts’ John Ruggie is speaking of? Wright (2008) analyzed 320 cases of alleged corporate-related human rights abuses and concluded that all types of industries and business activities around the world can be involved in, or can be the direct cause of, adverse impacts on virtually all the human rights. The study revealed a particular link with extractive industries (see also Kaeb, 2008; Drimmer, 2010) and the majority of human rights impacts were observed in non-Western countries. Also, the report showed that many human rights impacts resulted out of a multi-dimensional complexity involving supply chains with

thousands of companies involved which complicates the provision of effective remedy. Around the world, company involvement in human rights abuses involved poor working conditions and related physical and mental trauma, the use of child labour, and loss of life (Aizawa and Tripathi, 2016). Also, business activities directly affected human rights through excessive forms of environmental pollution, vibrations, and dust creation (van der Voort and Vanclay, 2015; Tuncak, 2017), evictions, expropriation and/or involuntary resettlement (Kemp et al., 2017), as well as through the misconduct of security forces resulting in physical injuries or loss of life of community members (Kaeb, 2008). More specifically, environmental, Indigenous peoples and human rights defenders disputing project developments, form a target of violence and murder (Globalwitness, 2017).

In addition to Wright's analysis, the establishment of an international non-profit initiative, *the Business and Human Rights Resource Centre*, resulted in the tracking of human rights performance of over 7000 companies in 180 countries, providing on a daily basis documentation of all kinds of business related human rights harm and company responses to this harm (businessandhumanrightsresourcecentre, 2017).

The intention of this PhD research was to obtain an insider's corporate perspective on how and why business related human rights impacts occur and what corporate procedures exist to manage these impacts. In addition, through daily engagement with company staff, the aim was to identify how staff members perceive the challenges of implementing these procedures. The research was specifically focused on the construction and operations of development projects; large-scale infrastructures that include dams, mines, oil and gas drilling, factories, ports, airports, pipelines, electricity transmission corridors, roads, railway lines and other infrastructure including large-scale agriculture, forestry and aquaculture projects (Vanclay et al., 2015). In the following section, I will shortly elaborate on the development of the international human rights system and the establishment of the neo-liberal development paradigm.

Why are most development projects not human rights-based?

The international human rights system as it exists today became established after the Second World War through the United Nations. Human rights can be commonly understood as being those “inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being” (Sepulveda et al., 2004, p. 3). Furthermore, in the UDHR, human rights are proclaimed as a “common standard of achievement for all peoples and all nations”. The ICESCR has been ratified by 149 states, the ICCPR by 152 states, and the Convention on the Rights of the Child (CRC, 1989) has been ratified by 192 states (Sulpeveda et al., 2004). In addition, national human rights institutions (NHRIs) were established in each country to monitor government impact on human rights in each national context. Around 2000, human rights advocates within and outside of the United Nations started to consider human rights in development policy (Hamm, 2001). A Human Rights Based Approach (HRBA) was agreed with the aim of improving the mainstreaming of human rights protection in national law and policies, and in development policies and programs (Stamford Agreement, 2003). The human rights principles that should be embedded are universality and inalienability; indivisibility; inter-dependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law (Stamford Agreement, 2003). The application of the HRBA means that in all phases of development plans and projects, human rights principles guide assessment and analysis, design, implementation, monitoring and evaluation.

In addition to the formation of the international human rights system after the Second World War, an international neo-liberal economic order, also referred to as the Bretton Woods system, became established, accompanied by the creation of international economic institutions such as the World Trade Organisation (WTO), the World Bank, and the International Monetary Fund (IMF). From the 1980s on, these institutions have imposed a set of neoliberal principles (called the Washington Consensus) that required countries to follow the norms of free markets, private property and individual incentives; and governments were expected to deregulate, as well as to privatize their state enterprises (Gore, 2000). Adherence to the principles of the Washington Consensus was a great promise, especially for governments of developing countries to enable their economies to grow rapidly and develop in similar fashion as western countries. Development, from this economic perspective, was regarded as the need for a societal and economy-wide transition from a ‘traditional society’ (e.g. rural, backward, agricultural) to a ‘modern society’ (e.g. urban, advanced, industrial) and

is predominantly measured by a country's GDP growth (Gore, 2000). However, the application of the Washington Consensus has, especially for developing countries, not proven to be successful. A top-down approach with a narrow focus on national economic growth resulted in increased inequalities and impoverishment within and between developing countries (Stiglitz, 2002; Pogge, 2011).

A fundamental yet contested aspect of the dominant economic development paradigm is the promotion of large-scale capital-intensive projects involving multinational corporations (Oliver-Smith, 2009). This resulted in a shift in scale from local markets to international markets (i.e. economic globalisation). A further implication of the shift to large-scale development activities meant that it displaced and changed the traditional and rural livelihoods of local communities resulting in millions of peoples becoming impoverished on an annual basis (Cernea & McDowell, 2000; Vandergeest et al, 2007; Terminski, 2015). Whereas the technical uncertainties and risks that go along with the implementation of large-scale projects were studied and well recognized governments and project developers initially did not consider the social and human rights dimensions of large-scale project development (see Hirschman, 1967). More specifically, internationally ratified human rights law, human rights standards and principles (such as the HRBA) were not utilised to guide the design, construction, and anticipated outcomes of large-scale projects (see Marks, 2014). Economic globalisation and human rights are argued to be poorly integrated (Freeman, 2013).

According to Ruggie (2008), the institutional misalignment of the human rights system and the economic system forms a critical factor in business related human rights abuses occurring around the globe. There are various reasons that can explain this misalignment. At a national level, there is resistance within governments to accept a dialogue based on human rights due to their human rights record, or for fear of another form of conditionality that will delay or complicate development projects (Frankovits, 2006). Even in the UN agencies, there exists a lack of awareness, understanding and conviction about the added value of a human rights approach in development programming (Frankovits, 2006). Furthermore, the principles of international investment law that form the basis of the international economic system (as negotiated and established under the WTO) sustain the protection of business interests over and above national concerns such as the environment, adverse impacts on local communities and thus human rights (Ruggie, 2008; see also Miles, 2010). Through stabilization clauses in investment agreements, foreign investments can be exempted from social, environmental and

labour laws that come into force after the agreement, or can require the government receiving the project to compensate the investor for compliance with these new laws (United Nations, 2009). Thus, contract agreements between governments and foreign investors do not (clearly) designate responsibilities for managing the potential adverse impacts and these costs can become simply externalized (Ruggie, 2011).

Some human rights scholars (see Alston, 2015; Evans, 2016) have placed emphasis on the responsibility of International Financial Institutions (IFIs) investing in large-scale projects that are often characterized by significant social and environmental risks. The authors are critical of the fact that IFIs avoid explicit expectations regarding human rights towards their business and government clients. McBeth (2008) explained that the World Bank's principle of 'political prohibition' means that IFIs cannot become involved in any political matter of the country they invest in. Human rights tend to be seen by governments as a political matter and therefore the Bank is kept from imposing any such obligations. IFIs could thus undermine the international human rights system, and obstruct the integration of economic development and human rights. However, arguably, IFIs policies have become influenced by human rights standards and ideals, but through an implicit approach (Marks, 2014). For example, the poverty reduction mission of the World Bank involved increased investment in health and education, as well as an emphasis on improving governance issues (see World Bank, 1998). Therefore, all-though not explicitly, the main objective of the World Bank may be concerned with contributing to fulfilling the social and economic rights of peoples. Also, the World Bank and IFC social and environmental performance standards have, over the last decades, significantly improved, and these arguably cover human rights issues. However, recently, the World Bank and other IFIs publicized major deficits in the implementation of their performance standards, especially concerning project-induced displacement and resettlement (see AfDB, 2015; World Bank, 2015). From a human rights perspective, 'deficits' in implementing environmental and social performance standards suggest human rights violations of economic, social and cultural rights, such as the rights to adequate housing, work, food, health and life.

Particular human rights abuses linked to development are arising out of land acquisition for large-scale projects. Project-induced displacement and resettlement (PIDR) involves the expropriation and/or relocation of local peoples and/or their assets (Vanclay, 2017). Particularly in developing countries, the practice of land acquisition, or more critical

academics would refer to *land grabbing* (Zoomers, 2010), is considered an increasingly prevalent phenomenon creating widespread environmental and social injustices, and human rights violations. Decades of research has shown that PIDR has systematically led to the impoverishment of millions of peoples worldwide, especially affecting rural, tribal and Indigenous communities with a disproportional negative effect on women, children, the elderly, and the disabled (Cernea & McDowell, 2000; World Commission on Dams, 2000). An estimated 15 million of people displaced annually for the purpose of development, have experienced a loss of access to natural resources (water, land, forests), loss of livelihoods, loss of access to essential public services (access to markets, health and education facilities), loss of cultures, loss of social structures and relationships, children dropping out from school, and impacts on mental health (Cernea & McDowell, 2000; Wright, 2008; Ruggie, 2008; de Schutter, 2009; Anaya, 2011; Carmona, 2013). As a consequence of this, local resistance in the form of protests have escalated into grave conflicts involving intimidation, beatings and killings of project-affected peoples and their representatives such as lawyers and other human rights defenders (Wright, 2008; Laplante & Spears, 2008; Ruggie, 2008; Earth Rights International, 2013; Hanna & Vanclay, 2016).

The realisation of economic development can be linked to a global observed pattern of large-scale project related adverse impacts involving personal and community trauma, excessive conflicts and human rights abuses. Initially, human rights principles and standards were clearly not respected or adequately implemented in the local environment of development projects. But today, given the widespread acceptance of the corporate responsibility to respect human rights, what are responsible project operators doing about it? How should business enterprises improve their impact on human rights, especially in relation to displaced communities? *Can the cause be the cure?*

The research questions and theoretical approach

The objective of this research was to outline the challenges of implementing the corporate responsibility to respect human rights in the context of project sites, and to provide recommendations for improving project management so that human rights abuses are avoided and positive impacts on human rights are enhanced. Respect for human rights is a fundamental aspect of corporate responsibility in achieving sustainable development, specifically in contributing to the social sustainability of local communities. According to

Ruggie (2008, p. 4), to improve respect for human rights and enhance the social impact of business in society, “all social actors – States, businesses, and civil society – must learn to do many things differently”. This research is primarily concerned with whether and, if so, how business enterprises need to change their procedures and practice.

The main research question that guiding this research is: *How can the implementation of the corporate responsibility to respect human rights be improved at project sites, in order to enhance the social sustainability of local communities?*

There is no single definition of social sustainability, and it is defined in different ways in different contexts (see Vallance et al., 2011 for a clarification of the concept). However, the expansion and mainstreaming of the concept is increasingly observed in academia and by policy-makers (Dillard et al., 2008). Magis and Shinn (2008) formulated four universal principles that together describe social sustainability: human wellbeing, equity, democratic government, and democratic civil society. Businesses are regarded as a major actor for contributing to (aspects of) social sustainability. The connection between corporate actions and social sustainability arise from the social impacts of corporate activities in particular locations and by specific industries involving the workforce, suppliers and consumers, and local communities (Bebbington and Dillard, 2008). The United Nations Global Compact (UNGC, 2017, website), the world’s largest corporate sustainability initiative, described social sustainability as “identifying and managing business impacts, both positive and negative, on people”. In my view, social sustainability is a broad, holistic concept that emphasises healthy, liveable and equitable communities that allow individuals to achieve their full potential as human beings. Human rights are thus fundamental to social sustainability. Social sustainability necessitates meaningful community involvement in decision-making, and forms the basis of environmental and economic sustainability.

An important objective of this research was to study in the real world how large-scale projects are operated by private business enterprises, and how company staff manages adverse impacts on human rights. The research consisted of an analysis of two project sites in Mozambique: a mining project and a linear project that involved the construction of a railwayline and port.

The research was guided by the following sub-questions:

- 1) What does the corporate responsibility to respect human rights mean at the project site level?
- 2) What are the existing corporate procedures and practice, and to what extent are these aligned with respect for human rights?
- 3) What challenges do company personnel perceive in implementing respect for human rights?
- 4) How can respect for human rights become integrated in the identification and management of environmental and social risks and impacts?
- 5) When you are being involuntary resettled, what are your human rights that the company needs to respect, protect and fulfill?
- 6) Are the requirements set out in the international performance standards of international financial institutions adequate in terms of respecting the human rights of project affected peoples?

Business and Human Rights Theory

The human rights responsibilities of business have been a topic of academic examination for a couple of decades (see Donaldson, 1989; Ratner, 2001; Kinley and Tadaki, 2004; Clapham, 2006; Deva and Bilchitz, 2014). Apartheid in South Africa, as well as processes of globalization including the growth and spread of powerful multinational enterprises has resulted in various moral argumentations regarding the human rights responsibilities of business enterprises (see Ruggie, 2008, 2013; Enderle, 2016). In the 1980s, Donaldson (1989) argued that the foundational basis of corporate responsibility has to go beyond Friedman's profit maximization (see Friedman, 1962). He considered that multinationals should respect the human rights of those individuals and groups affected, especially when the rights affected are of the most fundamental sort (Donaldson, 1989).

The establishment of the Guiding Principles by Ruggie has resulted in both criticism and praise from various groups, especially human rights academics and NGOs (Blitt, 2012). Scholars from the discipline of Business Ethics have criticised the UNGPs foundations, particularly the principle of *the corporate responsibility to respect human rights* (Brenkert,

2016). ‘Responsibility’ implies a voluntary rather than an obligatory expectation for companies to respect human rights (Blitt, 2012; Muchlinski, 2012). ‘Respect’ means not to interfere with the enjoyment of human rights, thus corporate human rights responsibilities as framed by John Ruggie do not imply a responsibility to protect and fulfill human rights. It is a negative duty (Fasterling & Demuijnck, 2013). John Ruggie established the foundation of the corporate responsibility to respect human rights as deriving from ‘societal expectations’, which implies a moral responsibility that is inherently voluntary (United Nations, 2008; United Nations, 2011). From a practical point of view Cragg (2012, p.11) questions this moral foundation of the corporate responsibility to respect human rights, by discussing whether it “will stand up under the practical stresses and strains of corporate strategic planning and day to day operations when and where the practical implications of implementation must actually be faced”. In fact, these practicalities are exactly what I investigated by following company staff in the field responsible for managing human rights impacts on local communities. Also, Deva and Bilchitz (2013) are particularly worried about the voluntary nature of corporate human rights responsibilities. This is also a major concern of many human rights activist groups. According to Human Rights Watch (HRW, 2011) the UNGP means nothing more than the endorsement of the status quo: a world where companies are encouraged, but not obliged, to respect human rights.

Some human rights scholars and many activists find that only by formally regulating multinational enterprises through establishing corporate human rights obligations, will corporate related human rights abuse become effectively addressed. Especially, corporate human rights obligations should ensure people’s access to remedy when they have experienced adverse impacts. Therefore, human rights scholars and activists continue to advocate for the development of a business and human rights treaty (Bilchitz, 2016; de Schutter, 2016). However, Blitt (2012) stressed that the endorsement of the UNGP does not present a failure, instead it has provided an important starting point for further future development of strengthening corporate human rights duties and access to remedy. Also, the upsurge of interest by academia has resulted in the first *Business and Human Rights Journal* by Cambridge University Press, with its first issue in 2016.

On Human Rights

Human rights form the foundational concept applied in this research. Therefore, obtaining a broad understanding of human rights concepts, their development and critical issues was an important inquiry. The core human rights were established in the International Bill of Human Rights that includes the Universal Declaration of Human Rights (UDHR) (United Nations, 1948), the International Covenant of Economic, Social, and Cultural Rights (ICESCR) (United Nations, 1968a) and the International Covenant of Civil and Political Rights (ICCPR) (United Nations, 1968b). When human rights became formalized in 1948, the UDHR proclaimed that human rights are universal, which means that the protection of human rights form a common standard to be ultimately achieved by all governments (Sulpeveda et al., 2004). A more-or-less accepted universality could be observed by a large number of states that have ratified the foundational International Bill of Human Rights.

The most problematic aspect of the concept of human rights is that human rights scholars, as well as scholars from various social science disciplines, conceive the concept very differently and with a varied enthusiasm. Scholars differ on the foundation, universality, possible realization, and legal embodiment of human rights (Dembour, 2010). The establishment of human rights resulted from a naturalist perspective that considered human rights as an intrinsic part of being human, independent of social recognition and/or actual fulfillment. Other perspectives emphasize the existence of human rights as part of a societal agreement, or regard human rights as not being relevant to the whole of moral or social life (Dembour, 2010). Further critiques on the human rights concept involve cultural relativist, feminist, realist, Marxist and post-colonial perspectives. The purpose of this research is not to go in-depth in discussing these critiques. However, all these criticisms come down to one single practical or conceptual critique: Why is there a gap between the human rights ideal and practice? Has the practice, so far, failed to live up the theory and should we be concerned with how this can be improved? Or, is the concept of human rights as a standard invalid? (see Dembour, 2014). This PhD research is primarily concerned with the application of existing human rights principles and standards. Therefore, I take on the naturalist approach to human rights assuming that the existence of human rights is a universal concept as established in numerous human rights Treaties, Covenants and documents. The starting point of this PhD

research is thus practical, and is concerned with implementation of human rights rather than challenging the concept.

It is important to emphasize that the interpretation and application of the human rights concept is continuously evolving. The development and endorsement of the UNGP, and specifically the developments related to *the corporate responsibility to respect human rights* could be observed as part of an on-going paradigm shift from applying human rights solely to governments, towards analysing the activities and impacts of multinational corporations regarding human rights. Furthermore, the understanding of human rights is evolving through the establishment of other new principles. For example, through the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) the principle of Free Prior and Informed Consent (FPIC) became acknowledged (United Nations, 2007). In addition, a imminent global environmental crisis resulted in the United Nations appointing a new Special Rapporteur on the enjoyment of a safe, clean, healthy and sustainable environment (Knox, 2012). Also, the mandate of John Ruggie to consider human rights in relation to business enterprises has resulted in other United Nations Special Rapporteurs increasingly considering the impact and responsibilities of private actors on human rights including the rights of Indigenous peoples (see Anaya, 2011, 2013), the right to food (see de Schutter, 2009), extreme poverty (see Alston, 2015) and environmental rights (see Knox, 2012).

An interdisciplinary approach

Human rights do not tend to be part of many academic discourses and social research inquiries. The concept has been largely neglected by social scientists and repeatedly criticized for not being relevant in various cultural and socio-economic contexts (Donnelly, 2007). Freeman (2013) considered that human rights should become more used in the social sciences in the form of an interdisciplinary approach linking with, inter alia, studies of culture, globalization, development and poverty. Thereby, he argued, can the concept of human rights become more relevant in the real world.

This PhD research connects the current understanding of human rights (as established in the International Bill of Human Rights) with current ideas on the social aspect of sustainable

development. The international human rights system has defined what constitutes ‘development’ in the Declaration on the Right to Development (United Nations, 1986), as “a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”. Over the years, academic human rights and development scholarship has resulted in the establishment of a wide range of approaches, including: Human Development (UNDP, 1990); Development as Freedom (Sen, 1999); and Capability Theory (Nussbaum, 2011). These approaches recognize the relevance of human rights as part of development goals and outcomes. The human development approach articulated development as “a process of enlarging people’s choices. The most critical of these wide-ranging choices are to live a long and healthy life, to be educated and to have access to resources needed for a decent standard of living. Additional choices include political freedom, guaranteed human rights and personal self-respect” (UNDP, 1990, p.1). The United Nations *Human Development Reports* measure and promote a more balanced view of development outcomes by moving away from measuring growth primarily through GDP, to including indicators that measure improvements in, for example, access to education and healthcare.

An important body of research for this PhD was the Impact Assessment discourse (e.g. Vanclay et al., 2015). Recently, the notion of human rights became a growing subject of interest in the Impact Assessment community (see Kemp and Vanclay, 2013; Boele and Crispin, 2013; Graetz and Franks, 2013; Götzmann et al., 2016; Esteves et al., 2017). There has been debate about normative and methodological issues for integrating the analysis of human rights impacts into Impact Assessment (see Götzmann et al., 2016). Eventually, the need to consider human rights in Social Impact Assessment (SIA) has become firmly acknowledged (Vanclay et al., 2015). At the same time, stand-alone human rights impact assessment (HRIA) is being developed to specifically address corporate projects (Götzmann, 2017). However, scholars and practitioners differ in their opinion about the need for separate assessments (Salcito et al., 2012) and whether it would improve the actual practice of project management. Given the existing challenges of integrating social into environmental impact assessment both in theory and practice (Slootweg et al., 2001), adding another layer of human

rights to impact assessment requirements might complicate rather than improve project management of adverse impacts on the ground.

Another relevant discourse is that of development-induced displacement and resettlement (DIDR), project-induced displacement and resettlement (PIDR) and mining-induced displacement and resettlement (MIDR) (see Kemp, 2013; Vanclay, 2017). These acronyms are interchangeable, and in this PhD research I will mostly refer to the abbreviation of PIDR. Michael Cernea has brought considerable contributions to understanding and theorizing the social risks and consequences of economic development projects (see for example Cernea, 1996, 1997, 1999, 2000, 2003; Cernea and Mathur, 2007). He particularly advocated for an improved role of governments and social scientists in the construction and management of large-scale infrastructure projects (Cernea, 1996). He argued that, as a supplement to compensation resources, investment financing was needed to help resettled populations to improve their livelihoods (Cernea, 2003). His research and advocacy has led to the development and improvement of Resettlement Policies and Handbooks in the World Bank. These outline the requirements for resettlement so that affected peoples are not impoverished, but that their lives become improved, or at least be restored. In addition to Cernea, various other scholars, particularly Anthropologists, have studied the adverse consequences of development programmes, and have developed their own models and suggestions for change (for example Scudder, 2005; Mathur, 2006). However, not many scholars concerned with this topic have applied a human rights perspective. Also, human rights scholars have only a few studies undertaken considering PIDR. For example Stavropoulou (1993) and Morel (2014) discussed the right *not* to be displaced from an international law perspective.

Research methodology

To gain insights in the perceptions and experiences of company staff in managing human rights issues, a mixed method approach was chosen. The methodology consisted of an ethnographic approach with various qualitative research methods (see Hennink et al., 2012) as well as a human rights research method (see Coomans et al., 2009). Two project sites in Mozambique were selected for undertaking organisational and analytical ethnography involving participant observations, and in-depth interviews with selected company staff and

some key human rights stakeholders. The fieldwork in the two project sites formed important input for the development of various frameworks that can address how to improve implementation of respect for human rights. The fieldwork was also fundamental for the formulation of policy recommendations and for developing ideas for future research.

Data collection in Mozambique

Mozambique is an East African country, stipulated as a rapid development context. Similar to many other (developing) countries, Mozambique is utilising foreign investments in large-scale projects to advance the country's development. Especially large foreign investments in mining (Kirshner and Power, 2015), oil and gas (Santos et al, 2016), commercial agriculture (ProSavannah, 2016), real estate projects and transportation (IFC, 2016) have been implemented and are currently planned. Many of these projects evoked the displacement of thousands of local communities, particularly in remote and rural areas. Project-induced displacement and resettlement can pose a serious challenge, when performed poorly, to achieve social development and sustainability in the country. Therefore, in 2012, the Mozambican government established new legislation, *Regulations for the Resettlement Process Resulting from Economic Activities*, defining the requirements of resettlement caused by economic development projects. The Regulations established that resettlement should result in a better quality of life of the affected population taking into account physical, environmental, social and economic aspects (Republic of Mozambique, 2012). Furthermore, the Regulations determined that the project proponent is primarily responsible for performing the resettlement process (Republic of Mozambique, 2012).

Besides recent changes in the national legal framework, few academic studies have analyzed the social, environmental and economic impacts of some of the large-scale projects, particularly from mining and gas extraction. Abelvik-Lawson (2014), Kirshner and Power (2015), and Symons (2016) identified some of the structural challenges, such as a lack of government oversight, planning, and knowhow about the investing industries, as well as major difficulties in managing 'boomtowns' with preexisting high levels of unemployment, poverty and illiteracy. One particular challenge is the occurrence of resettlement in remote and rural areas, where people are relocated away from natural resources that are important for their small-scale economic activities and subsistence livelihoods.

The countryside in Mozambique is relatively highly populated, of which Nampula is the most densely populated province in Mozambique. A large share (70 percent) of the population of Mozambique can be defined as rural (Chiziane et al., 2015). Rural communities are scattered in many villages varying in size and often households have various farm plots in the area where they live (this can be up to 10 plots within a few kilometres range). At present, Mozambique is regarded as one of the poorest countries in the world with an average of 55 percent of the population living below the poverty line, and an average life expectancy of 50 years (World Bank, 2016). There is generally limited access to public services such as health clinics and schools, and there is little infrastructure, especially in rural areas. Also, the majority of the population in rural areas does not have access to electricity and potable drinking water.

Most communities in rural areas have land-based livelihoods, which means that they depend on the use of various kinds of natural resources for their survival and for a small income activities to buy additional goods (Isaacman and Isaacman, 2013). Most communities have distinct traditions and beliefs involving ancestral spirits that are directly connected to the land and the natural resources they make use of (for example particular trees or a river). Local communities often have considerable traditional medicinal knowledge, knowing how local plants and herbs can cure common illnesses. In each province multiple languages are spoken, and often in rural and remote communities people do not speak the National Portuguese language. Throughout Mozambique, but especially along the coast, local communities have mixed Islamic and Catholic cultural and religious traditions.

Then purpose of this PhD research was to investigate the implementation of the corporate responsibility to respect human rights in practice, therefore two projects were selected that involved two different multinational enterprises. The first project was studied between April and August in 2013 and involved a coalmine project in the Province of Tete (the left square in Map 1). The second project was studied between July and November and involved a railway line between Tete and Nacala a Velha, and the construction of a new port in Nacala a Velha (the right square in Map 1).

The two companies involved are from the mining industry sector originating from different home countries. The primary focus of the two studies was the same; identifying the practices and implementation challenges of company staff in managing human rights impacts, especially relation to displacement and resettlement. Both companies had a human rights

policy in place with specific acknowledgement of the UNGP (United Nations, 2011). Also, both companies established internal human rights staff members, whom were both based in the company's head offices. In addition, in both projects, the multinational companies were responsible for all the costs and management related to community displacement and resettlement.



Map 1. The map of Mozambique and indicated locations of the two projects studied

An ethnographic approach was used to obtain an insider's perspective, and was both interpretative as analytical (David et al., 2003; Hennink et al., 2012). Via my presence in the company on a daily basis, the objective was to participate in the internal activities of the company and in the activities held for the affected communities by company staff. By conducting in-depth interviews, the purpose was to understand how company policies and procedures were perceived and implemented. After the fieldwork periods in the two project sites, the obtained data was transcribed and analysed, and upon reflection, resulted in two Frameworks (a Human Rights Based Approach to Resettlement, and the Human Rights Sphere) in which the implementation of respect for human rights is elaborated for project site management.

Table 1 provides an overview of the research methods used including all the fieldwork activities that were undertaken.

Table 1. Overview of research methods and fieldwork activities

	Open-pit coal mine project	Railway project
<i>Brief description of project</i>	Acquisition of an open-pit coal mine by a multinational mining company. The project created economic displacement and required the involuntary resettlement of a village.	Construction/restoration of a railway line (900 kms in total) between a mining area and a port involving a consortium of Mozambican and other African enterprises and a multinational corporation, financed by international banks.
<i>Duration of the field study</i>	April to August 2013	July to November 2015
<i>Social research techniques used</i>	Participant observation, document analysis, in-depth interviews, field notes, notes from formal and informal discussions	Participant observation, document analysis, in-depth interviews, field notes, notes from formal and informal discussions
<i>Field visits to affected communities</i>	Accompanied community relations personnel on a daily to weekly basis to affected communities.	Accompanied community relations personnel including from the contractors along the railway line to various rural and (semi-) urban communities.
<i>Number of formal in-depth interviews with company staff and breakdown in terms of department within company</i>	Total 20 8 Community Relations 1 Global Team Social Performance 2 Exploration 1 Environment 1 Health and Safety 4 Operations higher corporate management level 3 Stakeholders (NGOs and Mozambican Human Rights League)	Total 17 15 Community Relations 1 Construction 1 Human Rights Division
<i>Business partners (contractors) interviewed</i>	None (community relations activities were mainly undertaken by their own staff)	3 (because the multinational company partly outsourced a large part of its community relations activities)
<i>Language of interviews</i>	English (the main language of the company)	Portuguese (the main language of the company)
<i>Typical length of interviews</i>	50 to 90 minutes	50 to 90 minutes
<i>Location of formal interviews</i>	Either in the local office in Tete or the head office in Maputo	In various offices in Nampula city
<i>Interview protocol</i>	In depth	In depth

Besides the fieldwork that was focussed on the specifics in each project site, I participated in various international workshops and events about business and human rights, and displacement and resettlement. These events were attended by the company staff from various companies and countries responsible for managing human rights and community related impacts. Table 2 provides an oversight of all the activities and projects that I undertook and that contributed to my understanding of the business and human rights predicament.

Table 2. Activities as part of the PhD that contributed to knowledge building on business and human rights

- Participation in Second United Nations Business and Human Rights Forum, Geneva
- Participation in ICMW workshop on Human Rights and Indigenous Peoples in Africa, Johannesburg
- Organising and presenting workshop on human rights and resettlement during Summer School on Oil and Gas (NUFFIC project), Maputo, Mozambique
- Participating in IAIA Special Symposium on Resettlement and Livelihoods, Skukuza, South Africa
- Participating in Human Rights and Impact Assessment Course, Danish Institute of Human Rights
- Participating in Summer School on Land Acquisition, Resettlement and Social Sustainability, RUG, Work Bank, CIG, Groningen, the Netherlands
- Participating in fieldtrip to resettlement in Germany, Garzweiler
- Participating in session with Netherlands Institute for Human Rights regarding gas extraction in Groningen

Through my participation in various workshops and summer schools I developed a broader and deeper understanding of business related human rights issues in other country contexts. These events also provided an opportunity to engage with company staff from other companies in other operational areas responsible for managing displacement, resettlement and human rights, as well as to engage with staff members from NGOs and International Financial Institutions that were involved in these matters.

Positionality in ethnographic research

The objective of using an ethnographic approach is to seek the insider's point of view and, therefore, an essential element is to obtain the insider's trust (Hennink et al., 2012). I was positioned as a research intern in both the company's community relations department. The general manager of this department introduced me to the staff members of the team, as well as to all other general managers of the company on site. I was given my own desk inside the department of the community relations team. In this way I could easily interact with the staff and establish trust by becoming involved in their daily activities and meetings, as well as by going for coffee and tea breaks, driving together to and from the company's main office, and by spending some leisure time in the weekends. Both projects were located in remote areas, where staff members are 'on site' for a couple of months, as well as during the weekends. This meant that some staff members and I were staying in the same accommodation (build or rented by the multinational company). I spend basically all my time with staff members of the companies, both from Mozambican and various foreign origins. I was wearing company clothes and safety boots, and I was required to check in with a badge as everyone else. So, I was, quite literally, walking in their shoes.

My strategy was to first obtain information about all the important desktop studies undertaken by and for the company, such as environmental and social impact assessments, internal risk assessments, company gap analyses, resettlement actions plans, stakeholder engagement plans, and social development plans. Second, I would participate in the staff's community activities that involved provision of information to affected communities, negotiation of compensation with households, the relocation of families, livelihood restoration projects, and resettlement monitoring activities. In the final month of the period, my plan was to conduct formal in-depth interviews with a selected group of staff members to dive deeper into the issues and challenges they experienced and perceived. However, in reality, after having arrived in the two projects, I was immediately invited to join the community engagement activities with company staff in the field. In between these activities with communities, I spend time at the company office to become familiar with company policies and procedures, plans and programs. Also, I regularly planned meetings with staff members to clarify the content and purpose of the documentation. These meetings were not recorded, I noted down all the information received as part of my fieldwork diary.

When in the office, I started talking to each member of the social team informally, and slowly by slowly I received more and more information (including the relevant documentation) about how they worked on a daily basis on community related issues, and what internal procedures were established. Similarly, I started to talk with staff from other departments in the company, as well as with staff from the relevant contractors that were executing some of the community relations activities. After a few weeks, most staff members got to know my research and myself on a more personal level, and more spontaneous conversations started. During the often long and dusty drives to affected communities, conversations with staff helped to establish trust and learning about the various perspectives. My participation in the meetings with (affected) communities was an opportunity for me to learn more about the challenges of the operational context, and to experience the traditional customs of the local communities, as well as becoming familiar with rural and/or remote areas in Mozambique.

The objectives of the observations were to comprehending the local contextual challenges that company staff worked in, getting an understanding of the main issues and impacts from the perspective of community members, as well as the interaction between staff members and community members. I was also observing the cultural settings, the ambiance between staff members and community members; was it calm, was it tense? Did it change? Did certain issues make people feel upset, and how did they express this? All these observations were noted down in a field research diary. In most engagement activities I stayed in the background and when necessary the local language was translated for me into Portuguese.

After spending extensive periods of time in the field and studying the company policies, procedures and reports, I undertook a desk study comparing the company procedures with what was happening in reality, and I was considering the expectations of international human rights standards (those set out by the UNGP and others specifically related to displacement and resettlement). Eventually, all the recorded in-depth interviews were planned in the last month of my stay. I developed a wide range of questions for in-depth interviews taking into the responsibilities of each interviewee. I tried to cover as many human rights issues as possible in the interviews, such as management of financial compensation, livelihood restoration, grievances management, access to information and participation, as well as broader management questions. I concluded asking each interviewee about how they experienced the observed gaps in the actual practice, and how they believed implementation could be improved.

Research ethics

The business and human rights discourse is contentious and characterized by activism that has resulted in many incidents of severe violence around the world towards environmental and human rights defenders of local communities (see businessandhumanrightsresourcecentre.org). However, there is a distinction between human rights scholarship and human rights activism. Human rights activism has the assumption that the human rights system must be promoted and further realized, whereas human rights scholarship is interested in the ‘goods and bads’ of the system and has an open eye to a direction opposite to human rights (Coomans et al, 2009). Throughout the PhD research, I had to become aware of my own ‘desired’ or judgemental assumptions.

In the process of engagement and negotiation with the social general manager of the two companies to undertake a human rights study for my PhD, an important aspect was to maintain company anonymity in my research. In addition, all the interviewees and staff I engaged with were guaranteed anonymity and confidentiality in my writings. For both companies a contract was established that outlined the responsibilities of the research intern (me) and the responsibilities of the company during my stay with them. In this agreement the company management were aware that I was going to write and publish articles based on the data collection. In addition, I was confirmed getting access to internal documentation, meetings, to join staff on community engagement activities and to conduct in-depth interviews. To also provide useful output for the company staff, especially the community relations department, we agreed that I would write up a final report about my observations in the company, with recommendations for how respect for human rights could become improved. In terms of financial support, I was not being paid a salary but the companies covered my local expenses such as accommodation, sustenance, and local transport.

Another ethical issue comprised how I would conduct myself towards the staff members. The overtly negative literature regarding business practices and human rights, displacement and resettlement, and extractive industries in general, meant that I had to avoid developing my own negative bias. So, when introducing myself to the company staff and in my daily engagement with them, I had to maintain an open-minded view. I often introduced myself as a student very interested to learn from the staff members’ experiences. Sometimes, this meant that I would avoid human rights language when I noticed that some staff members would

become defensive. For example, one staff member opened a conversation with me by saying that local communities are not so vulnerable as all NGOs say. I decided not to give my response about agreeing with this or not, as it was very important to establish trust, and it was not my place to judge. However, there were also situations that staff members would come to me and ask me about a human rights issue in a situation they had encountered. For example, I was attending a training session on security and human rights with security staff members, and the security staff (whom had to work in remote areas) reported that they did not receive adequate provision of food from their bosses (a contractor of the mining company). In this situation, I decided to speak to the responsible security manager of the mining company to inform him about the issue.

During the preparations of the in-depth interviews, after having observed and spoken informally about many of the challenging aspects regarding impacts on communities, I needed to remind myself of asking open questions. The advantage was that I had become familiar with each of the participant for my in-depth interviews, so discussing sensitive topics and issues were not difficult; they knew I knew about these issues, as I had joined them many times in the field with the communities. Nevertheless, to make clear that I was not doing the interview to find their errors, I emphasized to each interview participant that I was seeking their perspective, how they perceived the challenges for implementation, and what they would recommend in terms of policy or implementation changes. Prior to the interviews, the participants were informed with a one-page letter (in English and in when appropriate in Portuguese) about my research goals and objectives, as well as about the use of the recorder. Before the start of the actual interview I would discuss the letter with them, and ask their approval for using the recorder. They were also informed that their names were kept anonymous and that, for further analysis and writing of the articles, the recordings were only handled by me. Finally, after I had conducted all the interviews and my stay in the company came to an end, I organized a moment to have drinks together, to thank all the staff, especially from the community relations department.

I believe trust was most essential in order to have interviews that involved open and honest conversations about how things really were. Some participants told me that the interview had provided an opportunity for them to reflect on their work and the community issues, and on the challenges they experienced on a daily basis in their working environment. They usually did not have the time for this. Also, the discussions had reminded them of the importance of

their work, for the company, but also for the need to contribute to the sustainable development of the local communities, and the country as a whole.

Outline of the Thesis

This PhD research consists of six chapters. In the first chapter I have outlined the research problem, research questions, methodological approach and the related ethical considerations. The second chapter provides the empirical basis of the research. It presents the results and analysis of the organisational ethnography that was undertaken in the two project sites in Mozambique, in 2013 and 2015. The chapter first highlights some of the practical aspects of implementing respect for human rights and provides a reflection on community relations practice, particularly considering Community Relations mining industry literature. The chapter continues outlining the observed practice of two multinational companies and the challenges of implementing respect for human rights. This chapter provides important insights in organisational processes in which company staff manage impacts of displacement and resettlement.

Chapter three provides empirical results in relation to the mining project on a particular human rights impact, namely the loss of access to public services as a consequence of displacement. Restoring and improving access to essential public services is an important but underexposed human rights issue in project-induced displacement and resettlement. The company of the project was committed to follow the IFC performance standards, particularly the IFC PS 5 on Land Acquisition and Involuntary Resettlement. An important question was whether adherence to the IFC PS 5 would also imply compliance with the corporate responsibility to respect human rights. Whereas human rights standards (such as the AAAQ) are very elaborative on the how to achieve access to public services, the IFC PS 5 approach regarding public services was limited. The IFC PS 5 considers the issue mainly from a technical perspective by stating that a plan should be provided about which of the services need to be replaced. The IFC PS 5 thus does not stress the importance of restoring and improving adequate public services, so to respect economic, social and cultural rights, especially the right to health, water and education. In the resettlement site of the mining project a health clinic, electronic waterpump system and school were constructed with better-

quality materials and equipment. However, this resulted in excessive maintenance requirements and costs which the community and local government were not able to cover.

In the fourth chapter, I outline the first conceptual framework drawn from the fieldwork in the two project sites: the Human Rights Based Approach to Resettlement (HRBAR). The HRBAR is furthermore based on a broad range of Human Rights Treaties, Covenants, General Comments, the Human Rights Based Approach (HRBA) and related documents, as well as Country Reports from United Nations Human Rights Rapporteurs concerned with business related human rights issues. I considered the content of these human rights documentation, and how improved implementation of these would fill that gaps I had observed in the two project sites. To the best of my knowledge, the HRBAR is the first analysis outlining and clarifying all the relevant human rights of people affected by resettlement, and it suggests how these human rights standards should be implemented. Also, the chapter addresses the IFC performance standards, especially the PS 5 on Land Acquisition and Involuntary Resettlement and provides a comparison with human rights standards. The HRBAR is intended to improve the awareness of resettlement practitioners and company staff regarding the human rights to be respected and fulfilled in resettlement situations.

In chapter five, I have generalized my findings from the fieldwork in the two project sites into a framework for how large-scale projects should identify, address and monitor human rights impacts. I was particularly concerned with how human rights issues can become better integrated in existing corporate management procedures including in environmental and social impact assessment (ESIA). This investigation resulted in the Human Rights Sphere (HRS), which shows how project phases and project activities can affect various groups of rights-holders and result in various inter-related environmental, social and human rights impacts.

In the final chapter I return to the implementation challenges observed in the two project sites of which I provided an analysis in chapter two and three. By utilizing Project Management literature, the analysis is somewhat extended to identify the potential root-causes of corporate related human rights abuses, and subsequently how these can be resolved. In addition, potential limitations to fully implementing respect for human rights in the context of displacement and resettlement have been discussed. Large-scale projects tend to create highly complex social and human rights risks and impacts, and the weak management by inexperienced staff can worsen the impacts. Individuals at the top management in

multinationals lack awareness or commitment to address early-on human rights issues at the bottom of local project sites, therefore a qualified community relations team is not present prior to project development. I emphasise that a much stronger and independent role for National Human Rights Institutions in overseeing resettlements can be important to improving resettlement processes and outcomes. Currently NHRIs play a very limited role in corporate-related human rights abuses. They are not involved in independently monitoring resettlement actions, investigating claims of violations and ensuring corporate accountability.

I conclude that education and training must be adjusted to improve the awareness and abilities of future project managers and other staff regarding the social and human rights impacts of business activities. Today's students are our next decision-makers and leaders, and they should not merely be trained in how to make most profit, but in how to build a sustainable environment including local community.

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Chapter2

*Challenges in implementing the corporate responsibility
to respect human rights in the context of project-induced
displacement and resettlement*



Photo 2. Community members and company staff talk about the livelihood restoration projects, Nampula, Mozambique, 2015

Challenges in implementing the corporate responsibility to respect human rights in the context of project-induced displacement and resettlement

Abstract

The endorsement of the United Nations Guiding Principles on Business and Human Rights in 2011 has led to many multinational companies making public statements of support for human rights. We provide an in-depth analysis of the challenges company staff face in addressing human rights risks at large infrastructure project sites, especially in relation to their resettlement practices. The research was conducted with two projects in Mozambique: an open-pit coalmine; and the construction of a 900 kilometre railway line. With the cooperation of two multinational mining companies, the design, implementation and outcomes of their compensation and resettlement plans were analysed using a human rights lens. Within the companies there was awareness and commitment to ensure adequate replacement housing and to provide financial compensation at full replacement value. However, there were major challenges related to organisational aspects, including significant time pressure from technical departments, an initial lack of planning regarding the management of community impacts and a lack of experienced staff in social departments. Together with various contextual issues, these challenges ultimately resulted in a failure to compensate and resettle all affected people in a manner that was compliant with human rights. We make seven recommendations that are relevant to respecting human rights in relation to infrastructure projects: (1) companies should carefully consider the positioning of the community relations function within the project; (2) there needs to be greater commitment at the project site level and at all project stages to ensure that international standards for environmental and social performance are met; (3) there must be adequate human rights expertise at the project site level; (4) project resettlement and compensation plans and procedures must document how they will address human rights topics; (5) there must be adequate supervision of subcontractors; (6) projects must properly plan to manage human rights issues irrespective of the realities of complex operating environments; and (7) companies should consider human rights issues in acquisitions and de-acquisitions.

Keywords: social impact assessment; extractive industries and society; involuntary resettlement; corporate social responsibility; livelihood restoration; human rights-based approach

Introduction

The *United Nations Guiding Principles on Business and Human Rights* (UNGPs) (United Nations, 2011) has led to policy commitments from hundreds of multinational corporations expressing acceptance of their responsibility to respect human rights (Business & Human Rights Resource Centre, 2017). The corporate responsibility to respect human rights means that companies have to avoid, mitigate and remedy any negative impacts on human rights that are caused by or related to their activities or the activities of their business partners (United Nations, 2011). The challenge for multinational companies is how they can accomplish respect for human rights in practice, especially at the project site level.

Notwithstanding the numerous corporate policy commitments to respect human rights, there is little information about how companies actually identify and address their adverse human rights impacts in practice, or about the challenges they experience in their attempts to do so. However, a few studies have been conducted on how local company personnel manage adverse impacts on local communities. Farrell et al. (2012) provided insights regarding internal issues such as the lack of robust planning at the start of a project, the little (or late) involvement of social science professionals, and challenges regarding local community representation and the distribution of compensation and project benefits. Kemp and Owen (2013) discussed the curtailed role of community relations staff in comparison with other departments in mining companies. Also, Kemp and Owen (2017a) provided an analysis of the actual implementation of operational grievance mechanisms at project sites, and the challenges in effectively identifying and addressing the adverse human rights impacts experienced by local communities and individuals. In addition, Owen and Kemp (2015) and Kemp et al. (2017) have considered the state of knowledge about resettlement practice in the mining industry. Despite these contributions, there remains a lack of research about how companies operationalise their human rights responsibilities and the challenges company personnel face in managing human rights risks and impacts at the project site level.

The purpose of this paper, therefore, is to consider the actual practice of companies in addressing their human rights issues, and the challenges company staff experience in doing so. We focus on the impacts on local communities of large-scale projects operated by foreign multinational corporations in the extractive industries, with specific attention given to project-

induced displacement and resettlement (PIDR). We examine the compensation and resettlement plans and practices of two multinational mining companies operating in Mozambique. PIDR is a contentious human rights issue (Morel, 2014; van der Ploeg and Vanclay, 2017a, 2017b), and over the years has received increased attention from a wide range of stakeholders, especially in relation to the need to improve compensation and resettlement outcomes for the impacted families and communities (Smyth et al., 2015; Vanclay, 2017). When land acquisition requires the removal of peoples and/or their assets, various adverse human rights impacts are at stake, especially the rights to freedom of movement, food, water, health and work (van der Ploeg and Vanclay, 2017a; Esteves et al., 2017). Vulnerable groups and households, including children, are particularly at risk (United Nations, 2007). PIDR is necessitated by various types of development and infrastructure projects, and takes place worldwide and often on a large scale (Terminski, 2015; Vanclay, 2017).

We make seven recommendations that are relevant to infrastructure projects: (1) companies should carefully consider the positioning of the community relations function within the project; (2) there needs to be greater commitment at the project site level and at all project stages to ensure that international standards for environmental and social performance are met; (3) there must be adequate human rights expertise at the project site level; (4) project resettlement and compensation plans and procedures must document how they will address human rights topics; (5) there must be adequate supervision of subcontractors; (6) projects must properly plan to manage human rights issues irrespective of the realities of complex operating environments; and (7) companies should consider human rights issues in acquisitions and de-acquisitions.

The lead author undertook 5 months of fieldwork at a mining site in Mozambique in 2013, and 4 months in 2015 examining a railway project. The research involved an analysis of each project's procedures and activities regarding compensation, resettlement and livelihood restoration, and the extent to which these activities reflected respect for international and human rights standards. The overall intention of the research was not to judge company performance, but to consider the implementation challenges experienced by local staff in order to provide lessons for companies and projects elsewhere.

What does respect for human rights mean in practice?

The international community, national governments and local communities confront multinational extractive industries with a bewildering array of expectations and standards regarding how company activities should contribute to the country's and community's sustainable socio-economic development (Van Alstine and Barkemeyer, 2014; Harvey, 2014; Vanclay, 2017). In addition to the UNGP (United Nations, 2011), a standard that has become particularly significant is the Performance Standard 5 of the International Finance Corporation (IFC), which deals with land acquisition and involuntary resettlement (IFC, 2012). An implication of these standards and expectations is that projects should respect human rights and contribute to their progressive realisation at the local project level through: effective impact mitigation in relation to local communities and the natural environment; the creation of local employment and other benefits to local communities; training programs that facilitate knowledge transfers to local communities; and improving access to essential services (Wettstein, 2012; Giuliani and Macchi, 2014; Esteves et al., 2017). Companies are expected to build effective relationships with local and affected communities, which over time may result in achieving acceptance, legitimacy and trust, in effect, a social licence to operate (Jijelava and Vanclay, 2017). In order to respect the human rights of local communities impacted by project sites effectively addressing social and environmental impacts is essential. However, respecting human rights cannot be offset by doing good deeds elsewhere (Ruggie, 2013) through, for example, the community development projects or other philanthropic initiatives commonly undertaken by mining companies as part of their sustainable development commitments (Ite, 2007; Esteves, 2008; Esteves and Vanclay, 2009; Kemp, 2010a).

The corporate responsibility to respect human rights requires all sizes and types of companies to identify and address all human rights risks and impacts that arise from their project activities and business relationships (United Nations, 2011). Multinational corporations have to consider how each (proposed) project site might impact on human rights, and how they will address adverse risks and impacts (United Nations, 2011). The human rights risks and impacts at project sites will likely differ depending on the dynamics of the local context. Although many multinational companies in the extractive industries have developed human rights policies and some are active in conducting human rights risk and impact assessments, their

efforts to address social and human rights impacts at the project site level may not be sufficiently rigorous (Owen and Kemp, 2014; Götzmann et al., 2016; Smyth and Vanclay, 2017). Corporate involvement in human rights violations increasingly results in various protest actions (Hilson, 2002; Hanna et al., 2016a; Hanna, Langdon and Vanclay, 2016), which can result in court cases with considerable consequences to the companies involved (Drimmer, 2010). The types of corporate involvement in human rights violations that have been identified in court cases include: misconduct by company security forces; company complicity in war crimes; inhumane labour conditions; forced evictions of communities and of Indigenous peoples in particular; and environmental harms (Wright, 2007; Bebbington et al., 2008; Drimmer, 2010; Kemp and Vanclay, 2013; Anaya et al., 2017).

Any large-scale project has the potential to create environmental and social impacts that can result in a detriment to human rights. In the mining industry, community relations departments are now typically tasked with addressing the negative impacts on local communities (Humphreys, 2000; Coulson et al. 2017). A major challenge for community relations staff is how to avoid and/or address adverse human rights impacts at the project site level.

There are many and various ways by which the activities of mining companies potentially infringe on the human rights of local communities (Kemp et al., 2010; On Common Ground, 2010; Rio Tinto 2013; van der Ploeg and Vanclay 2017a, 2017b). By the acquisition of land for the construction and operations of large-scale projects, companies will need to consider whether this could lead to adverse environmental, social and/or human rights impacts. In undertaking environmental and social impact assessments (ESIAs) and management plans, most human rights risks and impacts on local communities can be identified and potentially addressed. By way of example, human rights are breached when construction and operational activities obstruct or block a local community's access to basic services or common property resources, thus restricting access to their food, water, housing, cultural and religious sites (Kemp et al., 2010; van der Ploeg et al., 2017). These impacts and risks can be the cause of much harm to communities, protest and litigation (Drimmer, 2010; van der Ploeg and Vanclay, 2017a, 2017b).

A company can infringe human rights when impact mitigation measures do not result in the restoration of access to services or to the natural resources that are vital to the livelihoods or wellbeing of local people. Resettlement is too often regarded as a 'rehousing project',

focussing only on improving the material quality of houses rather than looking at all dimensions of life and the related human rights that can be affected (Vanclay, 2017; Smyth and Vanclay, 2017). For example, resettlement that results in increased distances to work, natural resources or essential services will likely incur higher travel costs that local communities may not be able to afford (van der Ploeg and Vanclay, 2017a; Mteki et al., 2017). When financial compensation is provided as a substitute for lost access to natural resources that provide water, food and/or general income (as for farmers and fisherfolk), or when affected families are not able to secure access to similar resources, mitigation measures must involve new livelihood opportunities and training (Cernea and Mathur, 2007; Vanclay, 2017). Otherwise, various fundamental human rights would be adversely impacted, especially the rights to work, water, food, health, and life.

The corporate responsibility to respect human rights means that compensation and resettlement procedures and implementation must become better aligned with international human rights standards (van der Ploeg and Vanclay, 2017). Companies have to avoid adversely impacting on human rights through: designing and implementing procedures that are based on the human rights principles of access to information; meaningful participation; the inclusion of vulnerable groups; and access to remedy through an effective grievance mechanism (United Nations, 2011; van der Ploeg and Vanclay, 2017a). These human rights principles are likely to go beyond the requirements established in national law (Vanclay 2017). To fully respect the right to information and the right to meaningful participation, adequate planning and thinking by company staff about how these rights can be best operationalized is required, taking into account the social, cultural and political characteristics of the local context (Frankovits, 2006). It is essential to identify and address how the project can improve access to public services and natural resources (van der Ploeg et al., 2017). From a human rights perspective, access should be restored by implementing mitigation measures that guarantee the protection of human rights by considering the availability, accessibility, acceptability and quality (including cultural appropriateness) of the issue under consideration (i.e. the AAAQ Framework) (Holst Jensen et al., 2014).

Internal organisational aspects of the company also comprise a constraint to effectively addressing adverse social and environmental impacts on communities (Kemp, 2011; Rees et al., 2012; Farrell et al., 2012; Owen and Kemp, 2015; Kemp and Owen, 2017b), and thus the extent to which companies respect human rights. Community relations departments are often

not well positioned in a company; they tend to be linked to external relations departments that have little to do with construction or operational activities (Kemp, 2010b, 2011; Coulson et al., 2017). When the community relations department is effectively linked to the operations and/or construction departments of the business, they would then be better enabled to directly influence the technical decision-making of those departments, which would assist in avoiding or minimizing adverse impacts on communities (Reddy et al., 2015). A related problem is that there may be a lack of community relations representation at the senior level to advocate for the resources needed to adequately address community impacts (Chatham House, 2013). This poor positioning of the community relations function may ultimately lead to a lack of experienced professionals in these teams (Owen and Kemp, 2017), or to a situation where professionals are only brought in after the impacts on communities have occurred and they are expected to ‘fix the problems’ and protect the company’s image (Kemp, 2010b; Farrell et al., 2012; Rees et al., 2012; Kemp and Owen, 2013).

The effective implementation of the corporate responsibility to respect human rights requires improving the cooperation between social and technical departments so that company staff are more aware of and can better consider the social, environmental and human rights impacts on local communities in project design (see Kemp, 2011). To achieve this, there is a need to have better leadership and more experienced professionals in social departments (Rees et al., 2012).

Methodology

The focus of this research was on the practices of company staff in addressing human rights issues in their compensation and resettlement procedures. With only a few exceptions (Farrell et al. 2012; Owen and Kemp, 2015; Kemp and Owen, 2013, 2017a; Kemp et al., 2017), the company perspective has been insufficiently considered in the academic literature. As suggested by Coulson et al. (2017, p.7): “Although an increasing amount is being written about company-community relations, there is very little recorded on the role and experiences of community relation practitioners (CRPs) hired to be the ‘face’ of a company in the community”. This is what we seek to do.

To consider how multinational companies implement the corporate responsibility to respect human rights and the issues they face in the context of project-induced displacement and

resettlement, two large projects in Mozambique were studied. With the support of intermediaries, in both cases the lead author was appointed as a research intern in the community relations team of each company. The first project, an open-pit coal mine, was studied between April and August 2013. The second project, the construction/rehabilitation of a railway line for the export of coal for a different multinational company, was studied between July and November 2015. For each project, a research internship contract was negotiated between the lead author and the companies. By agreement with the companies, and consistent with most research ethics protocols, the company names were kept confidential.

In order to obtain a company or insider's perspective on the social and human rights issues created by the project activities, the lead author spent most of her time (about four to five months) with each company's community relations team, but she also engaged with personnel from various other departments, usually on a daily basis. Her ethnography included a range of additional social research methods. A document analysis of key internal company documents and other relevant information was conducted, and included: social and human rights policies and procedures; environmental, social and human rights impact assessments and management plans; human rights risks reports; operational plans; resettlement action plans; due diligence reports; internal audit reports; gap analyses; and reports from external stakeholders including those of international financial institutions and human rights advocacy groups (e.g. Kabemba and Nhancale, 2012; Human Rights Watch, 2013; Lillywhite et al., 2015).

The rationale, precise meaning and local implementation of the company documents (and/or specific aspects of them) were frequently discussed with company personnel from various departments, especially the community relations department. Conversational data from one-on-one meetings were collected during the meetings (by note taking) or by writing up reflections of the discussions afterwards.

The lead author accompanied local staff on various community engagement activities related to compensation, resettlement and livelihood restoration. For the mining project, the participant observation included: six weeks observing the actual relocation process of one village of approximately 2500 people to the resettlement site; visits to the resettlement site and to the livelihood restoration projects; and visits to two villages impacted by the mine but which were not going to be resettled. For the railway project, research methods included: visits by company staff (and the lead researcher as intern) to 23 locations along a 600 kilometre section of the railway line, including four resettlement locations, six livelihood

restoration projects, and seven construction areas. Through these visits, the lead author could observe the interactions between company staff and community members.

A field diary was used, with notations about comments overheard, observations and reflections being recorded periodically, and on a daily basis when the lead author was directly involved in fieldwork activities. In the final month of the stay with each project, formal in-depth interviews were conducted with key staff (nationals and expats) from the main companies, the contractors involved in community relations activities, and key human rights organisations. The topics discussed in the interviews differed depending on the responsibilities of the participant and their position in the company. Table 1 provides an overview of the research methods used and the specifics of each case study.

Table 1: Overview of research methods used for each case study

	Open-pit coal mine project	Railway project
<i>Brief description of project</i>	Acquisition of an open-pit coal mine by a multinational mining company. The project created economic displacement and required the involuntary resettlement of a village.	Construction/restoration of a railway line (900 kms in total) between a mining area and a port involving a consortium of Mozambican and other African enterprises and a multinational corporation, financed by international banks.
<i>Duration of the field study</i>	April to August 2013	July to November 2015
<i>Social research techniques used</i>	Participant observation, document analysis, in-depth interviews, field notes, notes from formal and informal discussions	Participant observation, document analysis, in-depth interviews, field notes, notes from formal and informal discussions
<i>Field visits to affected communities</i>	Accompanied community relations personnel on a daily to weekly basis to affected communities.	Accompanied community relations personnel including from the contractors along the railway line to 23 rural and (semi-) urban communities.
<i>Number of formal in-depth interviews with company staff and breakdown in terms of department within company</i>	Total 20, comprising: 8 Community Relations 1 Global Team Social Performance 2 Exploration 1 Environment 1 Health and Safety 4 Operations higher level management 3 Stakeholders (NGOs and Mozambican Human Rights League)	Total 17: comprising: 7 Community Relations (main company) 5 Community Relations (subcontractor) 2 Community Relations (resettlement subcontractor) 1 high level Construction 1 high level Human Rights 1 Livelihood subcontractor
<i>Business partners (contractors) interviewed</i>	None (community relations activities were mainly undertaken by their own staff)	3 (because the multinational company partly outsourced a large part of its community relations activities)
<i>Language of interviews</i>	English (the main language of the company)	Portuguese (the main language of the company)
<i>Typical length of interviews</i>	50 to 90 minutes	50 to 90 minutes
<i>Location of formal interviews</i>	Either in the local office in Tete or the head office in Maputo	In various offices in Nampula city
<i>Interview protocol</i>	In-depth	In-depth

The study was approved by the Ethics Committee of the Faculty of Spatial Sciences of the University of Groningen, the Netherlands, and complied with general understandings of research ethics (see Vanclay et al., 2013). The companies provided local accommodation, sustenance, local transport and other support as necessary for the internship. The lead author did not receive a salary or other reimbursement from either company. The lead researcher was warmly accepted and invited to participate in all activities of the community relations teams. There were no duties required of the lead researcher, other than to provide a report of her observations and recommendations at the conclusion of the internship. All formal interviewees were asked for their individual informed consent regarding their interview as well as specifically for recording the interview. Each research participant/interviewee received an Information Sheet in advance of the interview, with an explanation of the study in English or Portuguese as appropriate. The names of all people who participated in the research have been kept confidential. The coding and interpretation of the transcripts was done by the lead author. Consistent with the internship agreement with each company, this paper was submitted to them for checking prior to publication. However, no request for any change was made by them.

Background and local context of the two projects

Mozambique is geographically located in East Africa and has a population of about 26 million people. As with many other African countries, Mozambique has recently experienced large foreign investments in the mining, oil and gas, agriculture, and forestry industries and urban property development. From the late 1990s to about 2015, the extent of foreign investment has resulted in Mozambique having one of the world's highest economic growth rates, up to 9 percent per year (Santos et al., 2016).

Mozambique is regarded as one of the world's poorest countries, with 55 percent of the population living below the poverty line (World Bank, 2016). The average life expectancy is only 56 to 59 years, and is amongst the lowest in the world (WHO, 2017). A large proportion (70%) of the population live in rural villages of various sizes, making the countryside relatively highly populated (Nhantumbo and Salomão, 2010). Displacement has occurred because of Portuguese colonial activities from the 16th century on, during the war for

independence from 1964 to 1975, during the ensuing civil war which lasted till the early 1990s, and by the villagisation programs of the new government (Chichava, 2014). More recently, resettlement has been instigated in the name of disaster protection (Moore et al., 2003), environmental conservation (Milgroom and Spierenburg, 2008), and increasingly by economic developments (UNCHR, 2014). In the view of most writers, many people have been left traumatized by Mozambique's turbulent past (Boyden and de Berry, 2004; Isaacman & Isaacman, 2013).

The country's abundant natural resources of forests, minerals, and fertile soils have attracted many foreign multinational corporations, which has led to the acquisition of large tracks of land, often in the least-developed areas. The increasing number of large-scale projects over the last decade or so has led to the expectation that these projects will lead to rapid social and economic development. However, they have also brought about many challenges, especially at the local level. Until the downturn in the coal price in about 2014, coal mining had been considered a promising industry (Kirshner and Power, 2015). In Tete Province in north-western Mozambique, many commercially-viable coal deposits have been identified and the government has handed out 245 mining concessions or exploration licenses to various companies (UNHRC, 2014). The resettlements instigated by some of these projects have resulted in severe negative impacts being experienced by local households and communities (Kabemba and Nhancale, 2012; HRW, 2012; Lillywhite et al., 2015).

In 2012, the national government established a new resettlement law, *Regulations for the Resettlement Process Resulting from Economic Activities*, to outline the requirements for conducting resettlement so that the livelihoods of people in resettled communities would be better restored and enhanced (Republic of Mozambique, 2012). A complicating factor is that the projects that cause large-scale displacement and resettlement often affect the most vulnerable segments of society making it extremely difficult to restore their livelihoods (Chichava, 2014). Furthermore, the Government of Mozambique lacks the capacity to effectively supervise the implementation of resettlement (UNHRC, 2014).

The first project studied was a coal mine close to the city of Tete in Tete Province. The project involved the acquisition of a junior mining company by a multinational company. The junior company had conducted various explorations and had initiated the construction of an open-pit mine. It had already negotiated and agreed the resettlement of various local communities with their community leaders and the government, and had undertaken the

relocation of a few households. The mining project was one of many mining concessions that involved land acquisition near the Zambezi River. According to the Social Impact Assessment studies done, there was a relatively high level of unemployment, illiteracy (especially amongst women) and alcoholism in the affected communities. The majority of the affected communities were rural and dependent on various forms of natural resource utilisation (subsistence farming, fishing, collecting bushmeat, fruits and nuts). Most of their fields were located close to the Zambezi River, which provided water throughout the year.

The second project was the construction/restoration of a 900 km railway line from a different mine in Tete Province to a new port, which was also under construction. The project entailed a consortium that was led by a multinational company, which was responsible for addressing all the adverse impacts that would be caused by construction and operational activities including those related to displacement and resettlement. The railway connected the Moatize district in Tete Province to the district of Nacala-a-Velha in Nampula Province. The project was broken-up into seven sections including one section of approximately 235 kilometres passing through the neighbouring country, Malawi. Some sections of the railway line already existed, from as early as 1912, but needed to be upgraded given the weight of the coal wagons and the intended frequency of trains. When fully operational (which happened in 2017), it was expected that there would be up to 15 trains per day, each with a length of around 2.0 kilometres and a passing time of around 20 minutes per train.

With much of Mozambique's infrastructure having been destroyed by the war of independence and the twenty years of civil war that followed (Robbins and Perkins, 2012), an additional justification for the railway project was to improve transport infrastructure, facilitate access, and enable and improve export of commodities (besides coal, also general goods and freight such as fertilizers, fuels and grains). The railway line passes through two provinces and many districts in Mozambique. This meant a major administrative complexity with the involvement of many government stakeholders including provincial governors, district administrators, and the local and traditional leaders of each community. The focus of the research was on the largest of the eight sections of the railway line, which comprised the restoration of a brownfield area of approximately 600 kilometres of track. Here, the construction and restoration activities resulted in considerable displacement and resettlement of local communities. Under Mozambican legislation, people are not allowed to live on or use the land within 50 metres of the railway line (known as the partial protection zone).

Nevertheless, perhaps due to the stoppage of the train operations during the civil war, the government had not actively implemented this law and considerable construction of houses, markets, shops and agricultural plots had occurred along the railway line.

Company attempts to respect human rights at two project sites (results)

The open-pit coal mine project

There can be major human rights risks for multinational corporations in their acquisition of projects, especially those initiated by junior companies (United Nations, 2011; Coumans, 2012; Triponel, 2016). An acquisition will normally involve the transfer of responsibility for any adverse impacts on communities or the environment. It may also mean that the major company has to adhere to contractual arrangements that were signed by the junior company, even where these arrangements may not be consistent with international standards (Bebbington et al., 2008).

In its acquisition of the mine in 2011, the multinational company inherited responsibility for several human rights risks. A number of staff commented that the company was not aware of the challenges that lay ahead and that its pre-acquisition due diligence assessment was grossly inadequate because, as stated by a senior expat: the due diligence “was run by a team from a first world country who didn’t know what questions to ask”. Nevertheless, shortly after the acquisition, the major company engaged a leading consulting firm to conduct a gap analysis comparing the procedures of the acquisition against the major company’s corporate standards. The gap analysis revealed many shortfalls with the procedures of the project and made many recommendations relating to community and human rights issues. Independent of the gap analysis, some other staff explained that following the acquisition, major improvements were needed to enable the project to meet international standards for health, safety & environment, security, and community relations.

In the first one to two years after the mine was acquired in 2011 – and as is typical in most acquisitions – the company had an unclear organizational structure. Staff explained that the reasons for this were that many things were happening at the same time, such as bringing-in new personnel (expats and locals) to join existing site teams; the starting up of the mine; and

new major exploration and planning activities. Many new staff were inexperienced and not adequately prepared prior to commencement of their duties. It was emphasized by one senior manager that (slightly modified): “the difference between company policy and reality comes down to the capacity and leadership in the company – the capacity to implement these policies is the key issue”. It was also mentioned that the severe time pressure to get the business up-and-running quickly resulted in things going wrong. Also, within the community relations department at least, initially the staff were scattered between many subprojects and did not have clearly designated responsibilities. Consequently, the community engagement and compensation activities happened on an ad hoc basis with little oversight from the higher management levels in Mozambique.

In 2012, the company engaged a leading international organisation to conduct a human rights impact assessment on all its operational activities so that it could better understand the impacts of its project on local communities. This was done because of the growing awareness of the risks it had inherited with the acquisition of the mine, and specifically regarding the resettlement. The human rights impact assessment report was regarded as being adequate/acceptable by the company, although senior company staff considered that nothing new was revealed by the report – which to some extent was good news to senior management. However, there was also the perception by the community relations team that the report was not particularly useful in terms of practical advice about what the company needed to do differently.

There were various internal organisational issues that needed to be addressed. For example, the Manager of Community Relations initially reported to the General Manager for External Affairs. This General Manager was responsible for bringing any community relations issues of concern to the attention of the Board. However, this person had a very demanding position dealing with many stakeholders including the government, and thus had limited time to consider community relations issues. This person’s base in Maputo, the capital city, far away from the project site, also made it difficult to deal with local community issues. This General Manager argued that the company should appoint an experienced Mozambican person as General Manager for Community Relations who would report to the Chief of Operations (who was often present on site), rather than to External Affairs. The company did this in 2013, resulting in the Community Relations Department having better leadership and, by being on a similar level as the other departments and close to them in Tete, better access to the resources

required to address community impacts. In addition, the Chief of Operations was well aware of the importance of addressing community impacts and supported the General Manager of Community Relations in requests for financial and other resources.

These changes led to an improvement in the management of social impacts and in communication with the affected and host communities. The community relations team established a system of complaints books so that community members could record their concerns. The books, one in each village, were collected monthly. The team also developed an engagement plan, which involved visiting project-affected communities on a monthly basis. Communities were asked to select their representatives. Subsequently, community relations staff organised meetings with these community representatives to discuss concerns and questions from the community. From observation, women were also part of these groups. However, it was suggested that the time taken for the company to address questions and complaints was often too long. One issue for the community relations staff was that there were not enough vehicles to enable them to travel frequently to each of the communities. This meant that, even though genuine attempts were made to improve the design of engagement activities and the exchange of information, the meaningful participation of all community members was not achieved, and specifically vulnerable groups and gender issues were not considered.

Arguably, the biggest human rights risk of the project related to the displacement and resettlement of local communities. The Resettlement Action Plan (RAP) indicated that around 1000 households were affected by the project, with potential loss to structures (houses, external toilets, etc.), public facilities (school, health clinic, orphanage), and to crops, fruit trees, grazing land and other natural resources. The junior company had gained approval from the national government for the resettlement of 679 households, and had already started relocating them. According to the RAP and our discussions, initially seven possible resettlement sites were considered. An assessment by an agricultural specialist led to the rejection of four of these sites. The remaining three sites, which were also not ideal, were submitted to community leaders for their consideration. The site preferred by the impacted communities, close to the Zambezi River, was ruled out because another mining concession had been granted over this site. The site ultimately selected was relatively far away (60 kilometres). Here, the host community comprised only four families, and there was sufficient land available for the resettled community. This site was endorsed by the government and the

leaders of the affected communities, but was deemed by most affected people to be undesirable on many accounts. Compared to the community's original location, there was less water and the soil was less arable, and it was further away from markets and essential public services. In being resettled, the affected people were uprooted from their homes next to the Zambezi River, which provided them with diversity in livelihood options, resilience, a sense of security, and their sense of place and identity (Human Rights Watch, 2013; Lillywhite et al. 2015).

The construction and operation of the mine resulted in the economic and physical displacement of local communities. Many families lost access to crops, fields, or to land used for other income-earning activities such as brickmaking. Various stallholders were negatively affected. Together with the Governor of Tete Province, the company determined that the financial compensation for these losses would be paid into the bank account of each head of household, usually an adult male. However, the majority of the hundreds of households entitled to compensation did not have bank accounts, or even the identity cards needed to open a bank account. Thus, the community relations staff had to establish the personal details (date of birth etc.) of these people in order to request an identity card for them, and then had to assist them in opening bank accounts. It was a cumbersome task to determine the personal details for all the affected households because, for many of them, this information was not available in local government databases and some people may not have known their exact date of birth themselves.

This problem was compounded by the slowness of the banks in opening such a large number of accounts. Another challenge was that in rural areas of Mozambique, there were hardly any branches of banks, or even any ATMs, and therefore families had to be assisted so that they could withdraw money from banks or ATMs in urban areas. Many had never used ATMs before. Finally, the bureaucratic procedures of the financial department of the company meant that it took several months before the full amount of compensation owing was transferred to the bank accounts. Company staff commented that because so much time was spent on managing these aspects of the compensation process, there was little time for the community relations team to do any other form of meaningful community engagement. Consequently, much of their work consisted of 'putting out fires', especially regarding complaints around the provision of the financial compensation.

For those who were economically displaced (e.g. brickmakers, farmers and shopkeepers), once-off financial compensation was provided to cover lost income for the government-specified period of time (typically one year), with the intention that they would soon re-establish their livelihood activities. However, this was problematic for many affected households. For example, it takes about seven years for a cashew nut tree to become established at full production levels. Also, many brickmakers and farmers found that they could not easily find the type of land they needed to continue their livelihoods. With the national government allocating so many mining licences covering much of Tete Province, there was a shortage of available land. Furthermore, company staff did not consider gender issues when providing financial compensation to the household head, who were predominantly male. For example, in situations where wives owned shops or were undertaking other economic activities in their own right, the company paid the compensation to their husbands. It was the view of many company staff that it was not culturally appropriate for wives to receive compensation in an account separate from their husbands.

It was noted by company staff that the inability to re-establish their livelihoods posed a major risk to communities and to the company in the future. The staff fully expected that the families would come back to the company to demand more money after their initial compensation pay-outs ran out or when they became dissatisfied. Thus, although the company considered it might have been absolved from responsibility for further costs, given that all affected people have signed a compensation agreement, there will likely be strong expectations in the community for further payments. This has and will likely result in an on-going conflicting relationship.

For the physically displaced families, various forms of in-kind compensation were provided in addition to financial compensation. Families received 2 hectares of (cleared) replacement land at the resettlement site as well as a new house. The company provided essential services including a primary school, a health clinic (including financing an ambulance operating during week days), and an electronic water pump. However, because of the reduced water availability at the new site, the company had to invest in a water supply system in order to ensure that communities would have adequate access to water for drinking, washing and agriculture. The challenge was how this system could be maintained into the future, as it required skills and finance that was beyond the budget of the local government and/or the capacity of the resettled community members to manage. The fully-equipped health clinic and

primary school (including computers), which were demanded by the government, led to a concern about who was going to pay for the costs of hiring security personnel, cleaners, and maintenance of the equipment. After some years, the responsibility for these public services was handed over to the government, with the risk that in the longer term these services will not be adequately maintained (van der Ploeg et al., 2017).

The community relations team included personnel who specifically focussed on livelihood restoration. Amongst other things, they trialled a variety of crops in experimental/demonstration plots at the resettlement site. They also experimented with methods to cope with the reduced water availability. Community members were encouraged to apply these new techniques in the plots they received as part of their compensation. The team also established chicken and pig farms that were to be managed by interested people as a means of restoring/improving their income. However, these livelihood experiments were not successful, partly because the sale of products was severely hampered by the distance between the resettlement site and the markets in and around the regional centre, and also because the resettled people were not particularly interested in this type of activity. Arguably, the underlying issue was the top-down nature of these livelihood restoration projects and the complete lack of engagement with the local community regarding the development of the projects.

Despite the company's efforts to follow international standards (specifically IFC, 2012), particularly problematic was the agreement made by the junior company with the government about the location of the resettlement site. Interviewees regarded the local context, which was characterized by extreme poverty, alcoholism, and high levels of illiteracy, as being extremely difficult, and they did not have time to implement appropriate participatory approaches (i.e. real community engagement). There were clashing timeframes between the community relations department and the technical departments, and also a disconnect between the company's need for rapid action and the time needed by the communities to understand the issues facing them. For example, due to time pressure from the construction department, some of the affected families were forced to relocate or to abandon their fields before having received financial compensation. These time clashes were difficult to manage. As observed by many others in the extractive industries (e.g. Rees et al., 2012; Farrell et al., 2012; Owen and Kemp, 2015; Kemp and Owen, 2017b), time pressure, a lack of effective planning in the establishment phase of a project, and a lack of awareness of the need to establish a

participatory process are major obstacles to adequately avoiding and addressing adverse human rights impacts.

The railway project

The railway project comprised a consortium of national and international companies, with the largest multinational company (hereafter the ‘main company’) having ultimate responsibility for compensation and resettlement. However, it outsourced the handling of compensation to a foreign subcontracting firm. The activities undertaken by this subcontractor on behalf of the main company were restricted to: informing local communities about the railway project, including its risks and benefits; identifying the households that would be affected by construction activities; making sure that they were informed and compensated for their losses; and managing community grievances. However, the main company outsourced the receiving of grievances and local community monitoring to a separate major international consulting firm.

Along the full length of the railway corridor and including the port, a total of over 12,000 community and household assets were affected by the project, including properties, dwellings, external toilets, walls, various fruit trees, fields, shops, and cultural sites. In the brownfield section of the railway line, some 800 households were physically displaced and had to be resettled. One complicating issue was that the Mozambican Land Law of 1997 established a 50 metre buffer zone for railways. However, in many locations along the brownfield section, people were living in this buffer zone. There was much discussion about whether these people were eligible for compensation or not. However, in order to be consistent with international standards, and with the approval of the government, the main company provided financial compensation at replacement value for the loss of assets (e.g. crops, shops and productive trees) in this zone. Also, it included ensuring replacement housing with improved quality. It was also agreed that the government would assist in providing support to all affected families to find replacement land. Together with the main company, the subcontractor drafted all these aspects into local compensation plans, which were signed-off by each district administrator.

The actual construction and restoration activities of the railway project started in 2012. Staff members commented that construction plans changed frequently and the community relations team had to continuously adapt their activities. Their engagement with families in one village

might be abruptly stopped because the construction team changed the plans and required the community relations team to immediately engage with another village so that the company could gain access to the land to start construction activities there. Community relations staff expressed much frustration with the situation that “social follows the path of construction”. Because of the constant changes in construction plans, it was not possible for the staff to provide adequate updates to the affected communities. This caused major confusion and uncertainty in the communities with people being unsure about whether they were entitled to receive compensation and/or whether or not they were going to be resettled or lose a portion of their land. Sometimes, people did not plant crops for the next season, which meant that their livelihoods were negatively affected when they were ultimately not resettled. People in this situation were not compensated for the consequences of any plans they may have made as a result of being informed that they would be resettled. This was the basis of much dissatisfaction. The change in plans was also a major disappointment for many people because they thought they would be able to buy all sorts of consumer goods.

A complicated situation also emerged regarding compensation for loss of housing. Although not in accordance with national legislation and international human rights norms, which require a minimum of three months notification (United Nations, 2007), the project established a 10 day formal notice of eviction. Due to the time pressure the project was under, households were expected to relocate themselves to temporary housing, which they had to find for themselves. The main company provided them with an allowance intended to cover the costs of rent as well as a generic transport allowance. Interviewees commented that vulnerable groups, particularly elderly people and women with children, struggled to find temporary housing within this short timeframe, especially in the urban areas. In most locations along the railway line, the availability of houses for rent was limited or non-existent. Furthermore, the rent allowance provided by the main company was a generic amount based on an assessment of the average rental prices in urban or rural areas. It was commented by the staff that the rent allowance provided to affected families was not always sufficient to cover the costs of the rent, especially in the city of Nampula. The procedures did not include a specific separate process for vulnerable groups. However, in practice, the staff emphasised that when vulnerable people approached the company for help to find a temporary house, extra assistance and support was provided.

Mozambican legislation required that replacement housing had to be constructed and was the responsibility of the proponent, and that lost housing could not be compensated solely by financial means. The compensation plan included two housing options for affected people, with support from the company to: (1) to build their own house with financial and material support; or (2) relocate to an existing house. A third option, where the company would construct new houses, was intended only for exceptional cases (i.e. vulnerable groups). However, news of delays in other locations along the railway line meant that most householders did not trust the main company and the subcontractor, and were not satisfied with these options, instead wanting to receive financial compensation up-front for their lost dwelling. Finding an existing house was not feasible for most households, because there were simply not enough houses available (at least in terms of those that qualified in terms of improvement of living conditions). In order to minimise disruption to communities, people were required to remain in their existing district. The third option, although originally intended only for vulnerable people, thus became the option selected by most families. A problem remained, however, in that the main company was not prepared for the number of new houses that needed to be constructed, and delays of up to three years occurred before all affected families were properly rehoused.

Several interviewees mentioned that since 2012 local community members had been drawing attention to instances of corruption and extortion occurring in the compensation process. Corruption in compensation procedures is a risk for all companies operating in any context (Cernea and Mathur, 2007; Standing, 2014; Reddy et al., 2015). In this railway project, there was a high risk of corruption because payments were being made as cash-in-hand and large amounts of cash were being taken to remote and relatively poor areas. It was explained that the reported corruption occurred in various ways. Community people had reported to the main company that some local staff were conspiring with some local community members to extract more compensation by fraudulent claims (e.g. fabrication/manipulation of the data used for the compensation assessment). In another situation, interviewees also explained that some community members were being extorted, or forced to hand over part of the money they received to certain local staff of the subcontractor. When news of the problem was finally registered by the subcontractor and the main company in 2014, they both took various actions. For example, the subcontractor appointed a new country director as well as a new manager for the social team to investigate the community grievances and to improve the compensation process. The main company appointed a General Manager for Community Relations who

instigated a capacity building program for the main company's social team and the subcontractor to improve professionalism, the (re)structuring of activities, documentation, and oversight. Furthermore, in late 2014, the main company hired a Mozambican organization to undertake the various resettlements along the railway line to reduce the delays in the provision of replacement housing. Also, the main company engaged with an international NGO to address and monitor the livelihood restoration of those families who had lost their fields.

The Mozambican organization was engaged because of its good reputation regarding community engagement activities, especially education and women's empowerment programs in rural communities. However, it had no previous experience in planning resettlement and there was confusion about responsibilities and procedures. Eventually, the main company hired five Mozambican construction firms to build the houses at various sites along the 600-kilometre section of the railway line. It was the task of the Mozambican organization to supervise these firms and also to establish a participatory process with the affected families regarding site selection. Interviewees commented that there were major challenges in constructing the new houses given the distances involved, the remoteness of many of the sites, and the poor road conditions. This resulted in a lack of adequate supervision of the construction activities and several issues emerged. One issue was that construction workers (who often came from distant towns) explained to the lead author that they were not provided with adequate food, water or shelter – therefore a human rights impact.

After some months it became clear to staff members of the main company that the Mozambican organisation needed major capacity building in how to plan and execute the resettlement. This capacity building was provided to them by community relations staff from the main company. Interviewees from the Mozambican organisation commented that resettlement was problematic, especially in urban areas, due to land scarcity, and that they had concerns regarding the reduced access displaced people would have to services, work, and increased distance to fields and to visit their relatives. The Mozambican organisation established a guideline that in rural and semi-urban areas, families could only be relocated up to 3 kilometres from their previous home to reduce the risk of obstructed access to essential services, roads, fields and to avoid decline in community cohesion. However, in the larger towns, especially Nampula, the number of people to be resettled was considerable (up to 200 families) and it was necessary to relocate people up to 10 kilometres away from their original

homes. In these situations, the main company eventually constructed additional wells and access roads.

Various organisational aspects in the first years of the project, together with contextual challenges contributed to the occurrence of many community grievances and human rights impacts. Staff members emphasised that contextual issues made it extremely difficult to adequately engage with affected communities. Along the 600 kilometre brownfield section of the railway line, there were around 40 affected communities, in urban and rural areas including very remote villages. Interviewees expressed that community engagement and establishing an efficient compensation process were extremely difficult because of the long distances, arduous weather conditions (torrential rain and severe heat), and weak local infrastructure. Company staff indicated that a major challenge was that they were based in Nampula and had to travel hundreds of kilometres each day to reach communities, while not having sufficient personnel or vehicles to do the job properly. For the most remote communities, where illiteracy was high and people generally did not speak the country's national language, staff commented that providing on-going access to information was almost impossible.

Given that the compensation and resettlement tasks had been outsourced, initially there was no perceived need for strict oversight by the main company. At the start of construction, there was no General Manager for Community Relations in the main company, although there were General Managers for construction, health & safety, security, and environment. The Manager of Community Relations reported to the General Manager for Construction, which created problems because this General Manager was unfamiliar with the resources needed to address adverse impacts on communities. Interviewees commented that, at commencement of construction activities, the time pressure, a weak organizational structure, a lack of oversight, and inexperienced personnel in both the subcontractor and the main company resulted in a compensation and resettlement process that was characterized by financial irregularities, a lack of up-to-date information to the (potentially) affected families, and tremendous delays in the provision of compensation and in the provision of replacement housing. Vulnerable households were particularly affected by these deficiencies.

Implementing respect for human rights in practice (discussion)

Achieving respect for human rights is “a day-to-day challenge, to keep it alive in the minds of people, and make them understand that it [needs to be implemented] on a daily basis” (company human rights advisor). Nevertheless, it was commented by the expats interviewed that human rights awareness in mining companies (including the two studied for this research) started before the *United Nations Guiding Principles on Business and Human Rights* was published. They considered that human rights impacts did not result from bad intentions, but from difficulties in implementing social and human rights policies at local project sites. In many large companies, there are some individuals with extensive knowledge of social issues, but it was emphasized that there can be very poor knowledge transfer – between departments, between business units in the same country, between the head office and the business units, and between companies. Thus, islands of social and human rights expertise/awareness (and ignorance) persist in companies, resulting in a loss of opportunity to learn from other companies’ mistakes and successes.

Often company attempts to respect human rights were done without the explicit use of human rights terminology. For example, at both project sites, various policies that clearly demonstrate an intention to respect human rights were implemented, including: the provision of replacement housing of a higher quality, restored access to essential services, the provision of financial compensation at replacement value, ensuring replacement land, establishing livelihood restoration projects, and addressing impacts on spiritual and cultural sites. However, the fieldwork revealed that full respect for human rights was not achieved primarily because of poor process and procedures, especially a lack of access to information, a lack of meaningful participation, and poor interpersonal interactions between company staff and community members.

In the policies and plans of both companies, the specifics of how to provide adequate access to information, ensure effective participation, and interact with the communities in a positive way were not sufficiently articulated. Regarding the lack of information, a primary issue was the failure to provide regular updates. Given the pressures they were under, company staff considered it difficult to constantly provide updated information. However, for people who are uncertain about their future, with the extent of change taking place, regular updating of

information was considered essential. In one urban area, for example, a major concern of women was planning where their children could go to school and ensuring that they could be enrolled.

From a human rights perspective, meaningful participation is key to ensuring that successful outcomes are achieved in compensation and resettlement processes (see van der Ploeg and Vanclay, 2017a). Attention to the needs of vulnerable groups and to gender issues in participation activities is essential to understand the variety of community needs and how impacts are experienced differentially. However, in both case studies, there was not meaningful participation of all affected families. This was especially the case in the selection of the resettlement site locations where, primarily, only local and/or traditional leaders were consulted on the presumption that these leaders would discuss the options with their community members. Meaningful participation was also lacking in the design and implementation of livelihood restoration programs, and there was no strategy to involve the concerns of women or other vulnerable groups. The meetings with local communities that were observed appeared to be consultative rather than participatory, with only limited exchange of information and concerns. From a human rights perspective, it is expected that community members should be actively involved in decision-making processes about issues that affect them (Frankovits, 2006; van der Ploeg and Vanclay, 2017a).

The engagement strategy of both companies tended to lead to a breakdown in information transfer, confusion amongst affected peoples, and to their distrust of the company. This demonstrates how important broad-based participation actually is. In general, the companies engaged first with the traditional and other local leaders. Sometimes these leaders made decisions of behalf of their communities. Other times, these leaders would gather the community for meetings so that the company staff could disseminate information about the project. Community relations staff stated that this strategy of first approaching the leaders had to be adhered to because this was customary practice in Mozambique. However, the staff recognized that a consequence of following this custom was that misunderstandings often occurred, especially when community leaders were not truly representative or when they did not pass information to their community. We consider that, while it is important to be respectful of traditional customs, a more open participatory process would limit the possibility of misunderstanding and escalating grievances occurring, and would ensure that all people could have a say and experience that they are truly involved and listened to.

Poor interpersonal interactions occurred in many, often subtle, ways, both intentional and unintentional. From the perspective of community people, company staff often had overt displays of their relative opulence, for example in terms of the clothes they wore or the company cars they drove. Bad manners were displayed by, for example, the wearing of sunglasses when talking to affected people. Disrespect was also sometimes shown by the failure of staff to shake the hands of local people, or in the way they talked to, or about, local people. The following extract from the transcript of interview with one of the community relations staff reveals that the community relations staff were aware of the complexities of interpersonal interaction.

Sometimes, we can lose patience. Sometimes we can lose patience because, sometimes, people act when they are angry. When we are coming as visitors – I call us visitors ... because we visit them, we are approaching them. They are living on their own land since long time. We have to think before whatever we do. We must not offend by any kind [of action], even if they are offending us. Although we are thinking that we are right and they are wrong, we must not shout at them. We have to say *sorry, excuse me or excuse us for this or for that* until you get aware that the situation is controlled, the person is calm, and you proceed with the conversation or the activity. But sometimes, you know, there are so many ways that we can make a mistake. It is a mistake when you are in the field and they offer you something – a simple offer of water or *'we are eating, eat!'* – if you refuse, automatically you have made a distance between you and the community, and you will not be accepted properly. Whatever you want to get as information [you won't get, unless you try] – if you don't want to eat what they are eating, you just [need to] eat a bit. Just eating a portion of their food, they feel so happy, you are automatically integrated and accepted. [If you do this] whatever you ask them, they will be open, and they will answer you with satisfaction. (Mozambican community relations practitioner)

Community people had the idea that the companies did not appreciate the severity of the impacts they experienced, or the extent to which they were inconvenienced. Sometimes aggrieved impacted people would make relatively long, arduous and expensive journeys to the main office in order to seek to speak to the relevant manager. While they were usually treated civilly, from the perspective of the local people, they were not necessarily treated in a manner proportional to the effort they expended to have the meeting.

Both projects were confronted with many protests from affected families, and some families refused to move or to accept their compensation payments because they felt they were not adequately informed or treated with respect. Most staff sympathized with the negative responses of community members. One participant commented, “[protests/blockades] do not

occur overnight – it is because the company does not answer back after many months”, and “often a long time passes before people hear back about what is going to change or they receive follow-up on their concerns”. In practice, it was observed that there was simply not enough time, financial resources and professional experience allocated to undertake information and participation sessions on an on-going basis taking into account the complexities of the local context. In a situation of limited resources and contextual complexities, one participant commented that “to manage all the expectations over 600 kilometres of railway line is just too hard!”.

In both projects, the notion of vulnerability, a key human rights principle, was not well understood or adequately considered in the compensation and resettlement process. The definition of vulnerability that was used by the two companies was too generic as they only referred to Indigenous peoples or to a generalized conception of ‘poor groups’ in society. Furthermore, the data collected in the household survey for each project did not have adequate measures to enable an adequate analysis of vulnerability. Arguably, vulnerability should be considered in terms of the adaptive capacity and potential sensitivities of each household (Tromp, 2016; Smyth and Vanclay, 2017). Also, there should be more concern for children as a vulnerable group, as they can end up in difficult situations, especially if they have no parents or when their parents are not capable to manage their relocation and livelihood restoration (including access to education) (see Unicef, 2015).

The increasing pressure on existing essential services and/or the absence of essential services in the locations to which people were being resettled contained a human rights issue that was difficult for the company staff to solve. For example, the increasing number of people in the host communities placed additional burden on local water sources, which were primarily wells. In some cases, the quality and/or quantity of the water was inadequate for agriculture or human consumption. In some cases, after additional investment by the company and considerable inconvenience to the affected people, an acceptable solution was found. However, in the mining case, the water problem remained.

Throughout Mozambique, there is a huge desire to become connected to the electricity grid. Most affected households, especially in rural areas, did not previously have access to electricity. With the promise of improved housing, most local people expected to have an electricity connection. In the mine project, this expectation was met to some extent. However,

in the railway project, the houses built for those people who did not previously have electricity were constructed without any intention that they would be connected to electricity.

Another issue raised by the staff members was the problem of increased inequality, which came about by the requirement to improve the standard of living of people being resettled (but not the people left behind). Especially in the railway line project, many families not considered as being impacted, but who were as poor as their impacted neighbours, felt that they were being denied opportunities and asked to be resettled so that they too might benefit from the replacement housing. Company staff struggled to know how to respond to these requests and expectations for improvement in living conditions from people who were not regarded as being project affected. Although the companies considered that the process of managing the impacts does need reflection on ‘what is the right thing to do’, they were also aware that they should not increase the dependency of the local communities on the company, or incur excessive costs for the company.

A major human rights issue of projects is that compensation, even when paid at replacement value, does not guarantee full restoration of people’s livelihoods and wellbeing, especially where people depend on agriculture, fishing or natural resources (Cernea and Mathur, 2007; Vanclay, 2017). In both projects, people who were only economically displaced (and thus did not need to be resettled) received financial compensation for loss of income from their livelihood activities such as brickmaking, harvesting cashew nuts or fishing. However, there was limited capacity of most people, especially vulnerable groups, to invest this money in new livelihoods. Both companies and the government were unable to avoid and/or address the diminishment in human rights enjoyment after the compensation was paid. This was a problem recognized by the staff of the two projects studied, but there was disagreement about who was responsible for those families and individuals who were unable to convert their financial compensation into new livelihoods. In Mozambique, as in many other countries, especially in rural areas, land-for-land is essential not only for income security, but also for people’s sense of identity, authority, and future security (Vanclay, 2017).

The fundamental objective of livelihood restoration programs should be to ensure that households can continue their lives independent of the company and/or the government, and preferably to be better-off after resettlement (or economic displacement). In human rights terms, this means that livelihood restoration programs should ensure there is no residual detriment to any human right (such as the right to food, health, water, and work) (van der

Ploeg and Vanclay, 2017). In the two projects, livelihood programs were established to help affected people change their income activities. In the mining project, the livelihood restoration options offered related to improving livestock and/or to changing crop production techniques. However, despite the efforts of the local staff, the resources for these programs were limited, there was limited experience within the team, and the projects were not well thought through in advance of resettlement. This also meant that the choice, design and establishment of the projects were not adequately discussed with the affected families prior to resettlement. As with many other large-scale projects (ICMM 2015; Hanna et al. 2016b), the failure of the livelihood restoration programs was not because company staff did not realise that these programs were important, the problem was the short timeframe and that the staff did not fully appreciate that an early-on participatory approach would have created greater ownership amongst the impacted people and provide an engagement and feedback process that would have enabled identification of any problems.

To respect human rights means that resettlement has to become a people-centred process with the main focus on achieving livelihood restoration and adaptation, rather than the existing tendency of community relations teams having to give in to pressures by the project's technical department to clear the areas as quickly as possible for construction (Wilmsen and Wang, 2015).

Conclusion and recommendations

In both projects, there was a high degree of awareness of the key international standards for resettlement, specifically: replacement housing that is an improvement of the previous situation; land-for-land compensation; financial compensation regardless of land tenure status and at full replacement value; the need to restore and improve access to essential services and cultural and religious sites; and the provision of livelihood restoration programs. Furthermore, each company had a senior human rights manager who had conducted internal human rights risk assessments and provided some training at project site level. The coal mine project also commissioned an external human rights impact assessment to deepen its knowledge about its impacts on local communities. However, in both companies, the human rights expertise remained at a high-level in the company, with the human rights function not being established

in an effective way to be able to provide on-going support at the local level to ensure that the human rights principles could become integrated in the actual practice of staff working with affected communities.

Despite general awareness of human rights issues, at the project site level there was no or only limited awareness of the United Nations Guiding Principles on Business and Human Rights. However, it is hard to establish whether the UNGP had led to major improvements in project outcomes, especially because the government played a major role in setting some of the resettlement requirements. Even though human rights issues were identified through the companies' internal risk management tools, the development and implementation of the compensation and resettlement plans and procedures were not guided by the principles in the UNGP. In particular, both projects did not establish an adequate grievance mechanism and engagement process at the starting phase of the project. From a human rights perspective, this is a fundamental flaw, because only through the early and on-going collection of questions, concerns and complaints can harm to affected peoples become avoided or adequately mitigated.

The projects were unable to adequately implement the compensation and resettlement standards for various reasons. There were many difficulties experienced by project staff, especially in ensuring the human rights principles of access to information and participation. Obstacles that were mentioned by the staff included high levels of illiteracy, alcoholism in some of the local communities (especially related to the men), the poor condition of local infrastructure (especially roads), and the remoteness of some of the affected communities, together with the lack of capacity within government (at all levels) to assist, for example, in engagement activities and in the provision of the required documentation. Notwithstanding these challenging contextual factors, there were also organizational dysfunctions that contributed to human rights impacts.

In both projects, initially the community relations function was not well positioned to access adequate financial resources and personnel. The initial lack of capacity and leadership in addressing community impacts, a lack of adequate planning, a lack of oversight, inexperienced personnel, together with tremendous time pressure resulted in a rushed compensation and resettlement process, leading to severe adverse impacts on local communities. Community grievances, protests and resistance were caused by the delays in the

provision of replacement housing and other forms of compensation, and by the poor prospects for livelihoods post resettlement.

Both companies did respond to the issues that arose by taking a range of actions, including: appointing high-level leadership in community relations; changing the organizational structure so that the Community Relations function became under the construction/operations department rather than External Relations (which resulted in improved internal communication and better access to resources); and ensuring a supportive working relationship between the community relations manager and their superior, thus ensuring that the superior was understanding of the complexity of social impacts and the resources required to effectively address them. At later stages in the two projects, grievance mechanisms were initiated or improved, which resulted in receiving more information about the needs of the affected communities, and thus the projects were then better able to track what went wrong in the compensation process.

Unfortunately, awareness of the need to address the social and human rights impacts early on, and with adequate resources and experienced personnel, are not the first priorities of most projects. It is extremely difficult, and in some situations impossible, for community relations staff to regain the trust of local communities, reduce impoverishment, and restore livelihoods, when practical solutions to the impacts were not considered in an adequate timeframe. When impacts are addressed too late, opposition to the project and conflict will continue, contributing further to the negative image of mining companies, even where project staff have the intention of doing the right thing.

Based on the analysis of the two projects studied in this research, we provide seven recommendations that should enhance the implementation of resettlement and compensation. These recommendations advocate better integration and implementation of respect for human rights principles at the project site level. This would result in the more effective and timely involvement of local communities, thereby reducing conflict and distrust. Ultimately, this would reduce human rights harm to communities and risks to companies.

1. Companies need to (re)consider the positioning of the community relations function in their business. They may need to change the company structure and reporting lines to increase alignment and improve internal communication. The community relations department should be led by an experienced social expert who is part of the project management team and reports directly to the project site manager.

2. There must be compliance with international standards for environmental and social performance (including for resettlement). Therefore, the first priority in all projects has to be that they ensure that they have adequate social performance capacity in terms of the number of social staff and the level of experience. Furthermore, they need to ensure that there is capacity building on all key aspects of social performance, including: stakeholder analysis; community engagement; identifying vulnerable groups and addressing their specific needs; gender analysis; baseline data collection; social impact assessment; grievance management; implementing social management systems; the development and implementation of resettlement action plans, livelihood restoration programs, monitoring & evaluation; and compliance with international human rights principles.
3. Like any other key area of project expertise, the role of human rights support in companies should be established at the project site level to ensure continuous support to staff so that human rights gaps in all areas of activity can be practically and efficiently addressed.
4. Project resettlement and compensation plans and procedures must comply with human rights standards and need to be improved by ensuring that they include: (1) clarity about how the human rights principles of access to information and meaningful participation are adequately addressed; (2) a clear procedure for implementing operational grievance mechanisms; and (3) a clear description for how the needs of vulnerable people will be addressed.
5. Where subcontractors are involved in key social performance areas, the main company has to establish an effective supervision procedure and have the capacity to ensure that the activities of the subcontractor are in compliance with human rights principles and the environmental and social performance standards of the main company.
6. There must be better consideration by companies working in challenging environments (e.g. long distances, weak infrastructure, remoteness, high levels of illiteracy) about how they will overcome contextual challenges that might make it difficult to respect human rights. It is not acceptable to claim that challenging environments are an excuse for failing to meet international standards for environmental and social performance, including observance of all human rights.

7. There can be significant human rights risks that come with acquisitions and therefore companies should ensure that they do a careful due diligence assessment of these risks prior to the acquisition. Conversely, it is also necessary for a company to ensure that human rights issues will be adequately considered by the acquiring company should there any asset shedding or de-acquisition.

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Chapter3

The responsibility of business enterprises to restore access to essential public services at resettlement sites



Photo 3. Relocation to new housing at the resettlement site, Tete, Mozambique, 2013

The responsibility of business enterprises to restore access to essential public services at resettlement sites

Introduction

Decades of research on project-induced displacement and resettlement (PIDR) and development-induced displacement and resettlement (DIDR) has shown that it has frequently resulted in the impoverishment of affected individuals and communities.¹ The World Bank has estimated that, since the 1990s, about 10 million people annually have been displaced by large-scale projects (e.g. dams, mines, and other infrastructure).² The neglect or lack of national and international standards has often led to the forced eviction of people from their living spaces, typically without fair compensation or possibilities for livelihood restoration.³ Michael Cernea was amongst the first to consider how the social risks of project-induced displacement contribute to the impoverishment of people. He developed a conceptual model, the *Impoverishment Risks and Reconstruction Model for Resettling Displaced Populations* (IRR).⁴ The risks he identified include: landlessness; homelessness; joblessness; marginalization, especially of vulnerable groups (displacement has a disproportional negative effect on elderly, women and children); increased food insecurity; increased morbidity and mortality; loss of access to common property and loss of access to community services (including health clinics and educational facilities); and social disintegration.⁵ Displacement has also led to violation of the human rights of displaced peoples.⁶ From the 1980s onwards,

¹ Michael Cernea, 'Risks, Safeguards and Reconstruction: A Model for Population Displacement and Resettlement' (1997) *Economic and Political Weekly* 3659-3678; Michael Cernea and Christopher McDowell (eds), *Risks and Reconstruction. Experiences of Resettlers and Refugees* (World Bank 2000).

² World Commission on Dams, 'Dams and Development: A New Framework for Decision-Making' (Earthscan 2000).

³ Micheal Cernea, 'Financing for Development: Benefit-Sharing Mechanisms in Population Resettlement' (2007) *Economic and Political Weekly* 1033-1046; Michael Cernea and Hari Mohan Mathur, *Can Compensation Prevent Impoverishment?: Reforming Resettlement Through Investments* (Oxford University Press 2007); Thayer Scudder, 'Development-Induced Community Resettlement', in Frank Vanclay and Ana Maria Esteves (eds), *New Directions in Social Impact Assessment. Conceptual and Methodological Advances* (Edward Elgar 2011) 186-201.

⁴ Michael Cernea, 'The Risks and Reconstruction Model for Resettling Displaced Populations' (1997) *World Development* 25(10), 1569-1587.

⁵ Cernea (1997) 3663.

the World Bank⁷ and the International Finance Corporation (IFC)⁸ developed and strengthened resettlement policies outlining the essential steps of best practice to be undertaken by responsible project proponents, including to fully and fairly compensate for all lost assets of all people affected by a project. Nevertheless, involuntary resettlement remains contentious and there is a need to further improve the awareness and implementation of the international and human rights standards by governments and corporate actors.⁹

We examine one specific human rights impact of PIDR, the loss of access to essential public services, and consider the responsibility of business enterprises to restore and/or improve access to those services at resettlement sites. A community's loss of access to essential public services affects various human rights enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁶ W. Courtland Robinson, 'Risks and Rights: the Causes, Consequences and Challenges of Development-Induced Displacement' (The Brookings Institution SAIS Project on International Displacement 2003) <www.brookings.edu/fp/projects/idp/articles/didreport.pdf> accessed 12 April 2016; Bogumil Terminski, *Development-Induced Displacement and Resettlement: Causes, Consequences, and Socio-Legal Context* (Ibidem-Verlag/Ibidem Press 2015).

⁷ World Bank, 'Operational Policy 4.12 - Involuntary Resettlement' (2001) <<http://go.worldbank.org/GM0OEIY580>> accessed 12 April 2016; World Bank, 'Involuntary Resettlement Sourcebook. Planning and Implementation in Development Projects' (2004) <<http://documents.worldbank.org/curated/en/2004/01/5159399/involuntary-resettlement-sourcebook-planning-implementation-development-projects-vol-1-2>> accessed 12 April 2016.

⁸ IFC, 'Performance Standard 5 Land Acquisition and Involuntary Resettlement' (2012) <www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES> accessed 12 April 2016; IFC, 'Handbook for Preparing a Resettlement Action Plan' (2002) IFC Environment and Social Development Department <www.ifc.org/wps/wcm/connect/22ad720048855b25880cda6a6515bb18/ResettlementHandbook.PDF?MOD=AJPERES> accessed 12 April 2016.

⁹ UNHRC, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Extractive Industries Operating Within or Near Indigenous Territories' (11 July 2011) UN Doc A/HRC/18/35, para 84; UNHRC, 'Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, Large-Scale Land Acquisitions and Leases: A Set of Core Principles and Measures to Address the Human Rights Challenge' (28 December 2009) UN Doc A/HRC/13/33/Add.2, paras 4,14,24; World Bank, 'Action Plan: Improving the Management of Safeguards and Resettlement Practices and Outcomes' (2015) <<http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/3/71481425483119932/action-plan-safeguards-resettlement.pdf>> accessed 12 April 2016; Jayantha Perera (ed), *Lose to Gain. Is Involuntary Resettlement a Development Opportunity?* (Asian Development Bank 2014) <www.adb.org/sites/default/files/publication/41780/lose-gain-involuntary-resettlement.pdf> accessed 12 April 2016; African Development Bank (AfDB), 'The African Development Bank's involuntary resettlement policy: review of implementation. Safeguards and Sustainability Series' (2015) <www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Safeguards_and_Sustainability_Series_-_Involuntary_Resettlement_-_En_web.pdf> accessed 12 April 2016.

Although the State is regarded as the main duty-bearer regarding respecting, protecting and fulfilling the human rights of affected people in situations of displacement and resettlement,¹⁰ in this chapter we reflect on the requirements, human rights responsibilities and expectations of private actors as established by IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement (PS5)¹¹ and the United Nations Guiding Principles on Business and Human Rights (UNGPs).¹²

We use a case study from Mozambique to illustrate how a resettlement project developed and implemented by a foreign private operator impacted on access to essential public services of the affected community; what was done to restore and improve access; and what challenges emerged. In Mozambique, there are many current and proposed developments especially in agriculture, infrastructure, mining, and gas.¹³ These projects require the relocation of tens of thousands of families, particularly in rural areas, causing significant impacts on peoples' livelihoods.¹⁴ To standardize and improve the resettlement process, the Mozambique Government adopted *Regulations for the Resettlement Process resulting from Economic Activities*.¹⁵ Through these Regulations, the Government transferred a major part of the responsibilities (including all the costs) for the resettlement to private operators. Various public services must be provided by the proponent, including roads, water supply, sanitation, electricity, health clinic, school, day-care centre, market, shops, police station, leisure, recreation and sports facilities, and worship and meeting places.¹⁶ The purpose of the case study is to shed light on the challenges in establishing and improving access to essential public

¹⁰ Relevant documents refer to the obligations of states in a situation of project induced displacement and resettlement, for example: UNHRC, 'Basic Principles and Guidelines on Development-Based Evictions and Displacement. Annex 1 of the Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living' (11 June 2007) UN Doc A/HRC/4/18 and 'African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)' (22 October 2009) <<http://www.unhcr.org/4ae9bede9.html>> accessed 12 April 2016.

¹¹ IFC, 'Performance Standard 5' (2012).

¹² United Nations/OHCHR, 'Guiding Principles on Business and Human Rights' (2011) 13.

¹³ African Development Bank Group, 'Mozambique' (2015) <www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2015/CN_data/CN_Long_EN/Mozambique_GB_2015.pdf> accessed 12 April 2016.

¹⁴ UNHRC, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona Addendum Mission to Mozambique' (4 June, 2014) UN Doc A/HRC/26/28/Add 6.

¹⁵ Council of Ministers, Republic of Mozambique, Decree 31/2012 (8 August 2012) 'Regulations for the Resettlement Process Resulting from Economic Activities (translated from Portuguese)' (*Associação de Comércio e Indústria* 2012) <www.acismoz.com/lib/services/translations/Regulamento_e_Reassentamento_August> as published JO.pdf> accessed 12 April 2016.

¹⁶ Ibid. 13.

services at the resettled village and to draw recommendations for governments, corporate actors and financial institutions involved in resettlement.

The case study research was done during a five-month period of fieldwork in 2013. It involved qualitative analysis of the resettlement process and its outcomes. In order to undertake the study, have access to internal documentation and company personnel, and to observe their activities and conduct interviews, a ‘research internship’ contract including a confidentiality agreement was signed between the researcher, the faculty and the company. Therefore the case study is anonymized and the names of the involved parties and participants are not provided. The study was approved by the Research Ethics Committee of the Faculty of Spatial Sciences, University of Groningen.

The study included document analysis including all relevant internal documentation, which was provided by the company (such as the Social Impact Assessment and Resettlement Action Plan). Furthermore, observations were systematically conducted (on a daily basis) during the first 6 to 8 weeks of the fieldwork observing the actual resettlement process moving the community from their old village to their new village. Also, the new village was visited multiple times to learn about the functioning of the new school, the health clinic and other constructed social facilities, as well as the livelihood restoration projects. During all the field observations and visits, the researcher accompanied company personnel and conducted ‘walking interviews’ collecting information from the personnel while they were doing their job. In the last month of the fieldwork, 20 in-depth interviews were undertaken with the company personnel responsible for implementing the resettlement and various external stakeholders (such as local and international NGOs). During the interviews, the impacts of the project on local communities, the challenges of implementing compensation standards in line with the IFC, and the perceptions of the company staff towards the achieved outcomes, were discussed.

The chapter starts with definitions of ‘displacement’, ‘involuntary resettlement’ and ‘essential public services provision’, after which it includes an examination of the most important international standards pertaining to involuntary resettlement and essential services that apply to private actors. Finally, the case study examines the challenges of

implementing various standards to restore and improve access to essential services at resettlement sites.

Defining ‘displacement’, ‘involuntary resettlement’ and ‘access to essential public services’

In this chapter, ‘displacement’ and ‘resettlement’ are understood within the context of ‘project-induced displacement and resettlement’ (PIDR), ‘development-induced displacement and resettlement’ (DIDR) and ‘mining-induced displacement and resettlement’ (MIDR). These terms are used to refer to an individual, family or community who are removed from (or who lose access to) their original location, facilities and/or resources in the name of public interest.¹⁷ Displaced communities, families and persons are classified as those:

‘(i) who have formal legal rights to the land or assets they occupy or use; (ii) who do not have formal legal rights to land or assets, but have a claim to land that is recognized or recognizable under national law; or (iii) who have no recognizable legal right or claim to the land or assets they occupy or use’.¹⁸

PIDR includes displacement caused by infrastructure projects (including large dams, large-scale industrial or energy projects, mining and other extractive industries); agricultural activities; urban renewal (including slum upgrades, housing renovation, and city beautification); unbridled land speculation; mega events; environmental/conservation activities (national parks); and activities supported by international development assistance.¹⁹ The IFC distinguishes between situations of economic displacement and physical displacement. Economic displacement refers to ‘loss of income streams or means of livelihood resulting from land acquisition or obstructed access to resources (land, water, or forest)’ because of construction or operation of projects or associated facilities.²⁰

¹⁷ UNHRC, ‘Basic Principles and Guidelines on Development-Based Evictions and Displacement’ (2007) Principle 8.

¹⁸ IFC, ‘Performance Standard 5’ (2012) 5.

¹⁹ UNHRC, ‘Basic Principles and Guidelines on Development-Based Evictions and Displacement’ (2007) Principle 8.

²⁰ IFC, ‘Handbook for Preparing a Resettlement Action Plan’ (2002) ix.

Physical displacement refers to ‘loss of shelter and assets resulting from the acquisition of land [requiring] the affected person(s) to move to another location’.²¹ Physical displacement can imply economic displacement in that people who need to be relocated can also experience a loss of income streams and/or loss of access to productive assets.²² Resettlement is considered as involuntary when those affected do not have the right to refuse the land acquisition or restrictions on their land use.²³

There is no formal definition of essential public services; however, there are various indications of what they comprise. For example, the IFC handbook refers to social services as including health clinics and schools, shops, service providers, community services and public infrastructure.²⁴ We consider that essential public services comprise those services that are provided collectively (or to which people have collective access) that are needed to sustain life and people’s culture and livelihoods. Thus, it may include access to streams (water), timber resources (energy supplies), land and wildlife (food), and medicinal plants (healthcare).

International standards for the protection of human rights in displacement and involuntary resettlement

The key international standards that pertain to the responsibility of private actors in relation to displacement and involuntary resettlement are the World Bank’s Operational Policy on Involuntary Resettlement (OP 4.12),²⁵ the IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement (PS5),²⁶ and the United Nations Guiding Principles on Business and Human Rights (UNGPs).²⁷ We discuss the requirements of these standards in relation to restoring access to essential public services in resettlement sites including a consideration of the relevant applicable human rights principles.

²¹ Ibid x.

²² Ibid 5.

²³ IFC, ‘Performance Standard 5’ (2012) 1.

²⁴ IFC, ‘Handbook for Preparing a Resettlement Action Plan’ (2002) 38.

²⁵ World Bank, ‘Operational Policy 4.12 - Involuntary Resettlement’ (2001).

²⁶ IFC, ‘Performance Standard 5’ (2012).

²⁷ United Nations/OHCHR, ‘Guiding Principles on Business and Human Rights. Implementing the United Nations Respect, Protect, Remedy Framework’ (2011) <www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> accessed 12 April 2016.

The World Bank established specific requirements for governments through its Involuntary Resettlement Policy (OP 4.12)²⁸ and provided operational and practical guidance through its Involuntary Resettlement Sourcebook.²⁹ Subsequently, the Asian Development Bank³⁰ and the African Development Bank³¹ developed their guidelines on resettlement in line with the World Bank. The IFC is the private sector development arm of the World Bank Group. IFC environmental and social policies were originally developed in concordance with the World Bank policies. All IFC-financed projects have to conform to the PS5³², which was updated in 2012 and is regarded as the international standard for resettlement.³³ A Guidance Note (GN5)³⁴ provides details on how PS5 should be implemented. In 2002 the IFC developed a Handbook for Preparing a Resettlement Action Plan,³⁵ which assists clients in managing the complex process of involuntary resettlement.

The IFC standards also form the expectations of corporate ‘good practice’ for projects not financed by the IFC.³⁶ For example, they are mentioned in the Equator Principles (EPs), a corporate social responsibility and sustainability framework for the global finance industry. The Eps have been adopted by over 80 financial institutions worldwide and represent over 70 percent of international project finance in emerging markets.³⁷

²⁸ World Bank, ‘Operational Policy 4.12 - Involuntary Resettlement’ (2001).

²⁹ World Bank, ‘Involuntary Resettlement Sourcebook. Planning and Implementation in Development Projects’ (2004).

³⁰ Asian Development Bank, ‘Handbook on Resettlement. A Guide to Good Practice’ (1998) <www.adb.org/sites/default/files/institutional-document/32259/handbook-resettlement.pdf> accessed 12 April 2016.

³¹ African Development Bank, ‘Involuntary Resettlement Policy’ (2003) <www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000009-EN-BANK-GROUP-INVOLUNTARY-RESETTLEMENT-POLICY.PDF> accessed 12 April 2016

³² IFC, ‘Performance Standard 5’ (2012).

³³ Gerry Reddy, Eddie Smyth and Micheal Styn, *Land Access and Resettlement. A Guide to Best Practice* (Greenleaf 2015) 27.

³⁴ IFC, ‘Guidance Note 5 Land Acquisition and Involuntary Resettlement’ (2012) <www.ifc.org/wps/wcm/connect/4b976700498008d3a417f6336b93d75f/Updated_GN5-2012.pdf?MOD=AJPERES> accessed 12 April 2016.

³⁵ IFC, ‘Handbook for Preparing a Resettlement Action Plan’ (2002).

³⁶ Reddy, Smyth and Styn (2015) 27.

³⁷ Equator Principles, ‘Members and Reporting’ (2016) <<http://equator-principles.com/index.php/members-reporting>> accessed 12 April 2016.

In their operational guidelines, the EPs require compliance with the IFC Performance Standards.³⁸ The objectives governing involuntary resettlement established in the PS5 are:

1) To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs; 2) to avoid forced eviction; 3) to anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restrictions on land use by providing compensation for loss of assets at replacement cost and ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected; 4) to improve, or restore, the livelihoods and standards of living of displaced persons; 5) to improve living conditions among physically-displaced persons through the provision of adequate housing with security of tenure at resettlement sites.³⁹

To implement these objectives, the IFC requires its clients to develop a Resettlement Action Plan (RAP) and a livelihood restoration plan that need to be negotiated between the government, the project proponent and the affected communities.⁴⁰ The RAP should include a census of all affected people, an inventory of their assets including the identification of likely losses of public resources, such as common property resources, public structures, cultural property, and infrastructure.⁴¹ GN5 provides an outline of the contents of a RAP, which must include:

Plans to provide (or to finance resettlers' provision of) housing, infrastructure (e.g., water supply, feeder roads), and social services (e.g., schools, health services); plans to ensure comparable services to host populations; any necessary site development, engineering, and architectural designs for these facilities.⁴²

The IFC emphasises that the client must make every effort to ensure continuity of social services at resettlement sites.⁴³ The IFC expects the government to make a commitment to staff the public services at resettlement sites. Where the government is unable to do

³⁸ Equator Principles, 'A Financial Industry Benchmark for Determining, Assessing and Managing Environmental and Social Risk in Projects' (2013) <www.equator-principles.com/resources/equator_principles_III.pdf> accessed 12 April 2016.

³⁹ IFC, 'Performance Standard 5' (2012) 1, 2.

⁴⁰ IFC, 'Performance Standard 5' (2012) 4.

⁴¹ IFC, 'Handbook for Preparing a Resettlement Action Plan' (2002) 19.

⁴² IFC, 'Guidance Note 5' (2012) 29.

⁴³ IFC, 'Handbook for Preparing a Resettlement Action Plan' (2002) 38.

so, the IFC states that the private actor should finance community organizations or appropriate NGOs so that they can support the continuity of these services.⁴⁴

GN5 makes only marginal reference to international human rights standards. With regard to the avoidance of forced eviction, Clauses 6 and 55 suggests guidance can be gained from the UN Guiding Principles on Internal Displacement, which are broadly human rights based.⁴⁵ With regard to adequate housing and security of tenure, Clause 14 refers to the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (hereinafter: Basic Principles).⁴⁶ These Basic Principles confirm that states bear the primary obligation for applying relevant international human rights law, but that other parties – e.g. companies, project managers, financial institutions, and individual parties including private landowners – also have responsibilities.⁴⁷ The Basic Principles suggest that projects requiring resettlement should provide land of better or equal quality to the land that is forfeited, and that any replacement housing should satisfy the following criteria: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services.⁴⁸ It provides a list of requirements for relocation sites including: access to a broad range of essential services and to natural and common resources; access to affordable, habitable, safe and culturally appropriate housing; accessibility for disadvantaged groups; and access to employment options, health-care services, schools, child care centres and other social services. Housing must provide adequate space, protection from cold, damp, heat, rain, wind, structural hazards, disease vectors and other threats to health, and ensure the physical safety of occupants.⁴⁹ Similar requirements are given in GN5.⁵⁰ The right to adequate housing and security of tenure as part of the right to an adequate standard of living (Article 11 ICESCR) seems implicit in PS5.⁵¹

⁴⁴ Ibid 38.

⁴⁵ UNCHR, 'Report of the Representative of the Secretary-General, Mr. Francis Deng, Guiding Principles on Internal Displacement' (11 February 1998) UN Doc E/CN.4/1998/53/Add.2.

⁴⁶ UNHRC, 'Basic Principles and Guidelines on Development-Based Evictions and Displacement' (2007).

⁴⁷ Ibid Principle 11, p 5.

⁴⁸ Ibid Principle 16, p 6.

⁴⁹ UNHRC, 'Basic Principles and Guidelines on Development-Based Evictions and Displacement' (2007) Principle 55, p 12.

⁵⁰ IFC, 'Guidance Note 5' (2012) 5.

⁵¹ OHCHR, 'General comment No. 4: The right to adequate housing' (1991) <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11> accessed 12 April 2016; OHCHR, 'General comment No. 7: The right to adequate housing, forced evictions' (1997)

Other IFC requirements include providing opportunities for affected peoples to participate in the resettlement process, their access to information, compensation and grievance mechanisms, as well as livelihood restoration programs.⁵² Also, the IFC specify that particular attention should be given to vulnerable groups.⁵³ This implicitly seems to respect human rights, such as the right to freedom of opinion and expression (Article 19 ICCPR) and the right to remedy (Article 2(3) ICCPR). In addition, the project proponent needs to develop a plan for replacement of social services including health centres and education facilities, which implies respect for the right to health and the right to education (Articles 12 and 13 ICESCR).⁵⁴ IFC also recognizes the principle of equality and equal rights between men and women (Article 3 of both the ICESCR and ICCPR). It does so by stating that affected women should not be worse off in relation to men and that compensation, resettlement assistance, job opportunities and community engagement should be adapted to allow women to benefit equally to men.⁵⁵

In cases where Indigenous peoples may be displaced, IFC Performance Standard 7 (PS7) applies.⁵⁶ PS7 explicitly refers to human rights in its first objective: ‘To ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples’.⁵⁷ PS7 also refers to ILO Convention 169⁵⁸ and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).⁵⁹ The IFC insists that relocation cannot proceed unless Free, Prior and Informed Consent (FPIC) has been obtained.⁶⁰ The PS5 and GN5 cover various human rights, most notably through the requirements of ensuring adequate housing and security of tenure. However, the IFC’s over-arching position on human

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11> accessed 12 April 2016.

⁵² IFC, ‘Performance Standard 5’ (2012); IFC, ‘Guidance Note 5’ (2012).

⁵³ Ibid 5; Ibid 12.

⁵⁴ IFC, ‘Guidance Note 5’ (2012) 29.

⁵⁵ IFC, ‘Performance Standard 5’ (2012) 4; ‘Guidance Note 5’ (2012) 17.

⁵⁶ IFC, ‘Performance Standard 7 Indigenous Peoples’ (2012) <www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES> accessed 12 April 2016.

⁵⁷ Ibid 1.

⁵⁸ ILO, ‘Convention Concerning Indigenous and Tribal Peoples in Independent Countries’ (ILO Convention No. 169) (adopted 17 June 1989, entered into force 5 September 1991) <www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169> accessed 12 April 2016.

⁵⁹ UNGA Res 61/295, ‘United Nations Declaration on the Rights of Indigenous Peoples’ (13 September 2007) UN Doc A/61/L.67 and Add.1.

⁶⁰ IFC, ‘Performance Standard 7 Indigenous Peoples’ (2012) 5.

rights and its lack of reference to the corporate responsibility to respect human rights, means that the IFC does not impose specific obligations on its clients to respect internationally established human rights relevant in resettlement contexts (e.g. the right to adequate housing and security of tenure, rights to education, health, culture and work).⁶¹ In this way, the IFC standards do not express the need for consideration of human rights risks in resettlement, and private actors are likely not aware of the various human rights that they should take into account in resettlement procedures.

United Nations Guiding Principles on Business and Human Rights

In 2011 the Human Rights Council, in resolution A/HRC/RES/17/4, unanimously endorsed the United Nations Guiding Principles on Business and Human Rights (UNGPs). The UNGPs implemented the ‘Protect, Respect and Remedy’ Framework⁶² developed by John Ruggie, who held the position of Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises between 2005 and 2011. The UNGPs provided a global standard for preventing and addressing the adverse impacts on human rights that are linked to business activities.⁶³ The UNGPs establish that multinational enterprises have responsibilities and duties in relation to the human rights of impacted peoples, but it does not create any new legal obligations.⁶⁴ The UNGPs led to an increased international awareness of the human rights responsibilities of business, and as a consequence many companies have adopted formal policies and statements with regard to respecting human rights.⁶⁵

⁶¹ There is discussion on the implications of explicit human rights requirements by international financial institutions, for example UNHRC, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston’ (4 August 2015) UN Doc A/70/274.

⁶² United Nations/OHCHR, ‘Guiding Principles on Business and Human Rights’ (2011).

⁶³ United Nations/OHCHR, ‘Guiding Principles on Business and Human Rights’ (2011); United Nations/OHCHR, ‘Protect, Respect and Remedy: a Framework for Business and Human Rights’ (2008).

⁶⁴ For discussion on the human rights responsibilities of business see for example: Surya Deva and David Bilchitz (eds), *Human Rights Obligations of Business. Beyond the Corporate Responsibility to Respect?* (Cambridge University Press 2013).

⁶⁵ Business and Human Rights Resource Centre, ‘Company Policy Statement on Human Rights’ <<http://business-humanrights.org/en/company-policy-statements-on-human-rights>> accessed 12 April 2016; see also company examples of Coca Cola <www.coca-colacompany.com/our-company/human-workplace-rights/human-rights-policy/> accessed 12 April 2016, and Rio Tinto <www.riotinto.com/ourcommitment/human-rights-4800.aspx> accessed 12 April 2016.

The three principles of the ‘Protect, Respect and Remedy’ Framework include the state duty to protect human rights, the corporate responsibility to respect human rights, and the provision of greater access to remedy.⁶⁶ The UNGP established that ‘[b]usiness enterprises should respect human rights. This means that they should *avoid* infringing on the human rights of others and should address adverse human rights impacts with which they are involved’.⁶⁷ The corporate responsibility to respect refers to all the human rights enshrined in the International Bill of Human Rights and the fundamental principles of the ILO conventions, as well as additional standards relevant to each context.⁶⁸ Another key aspect emphasized by John Ruggie is that respect for human rights should become part of State-investor negotiations and integrated in contracts.⁶⁹ For example, responsibilities for the management (prevention and mitigation) of social risks and potential human rights impacts should be clarified and agreed, and established in the contract between company and government.⁷⁰ When the restoration of essential services is part of the mitigation plan, the government and the company should set clear responsibilities with regard to construction and maintenance of the facilities in the short and longer term.

The foundational principle of the corporate responsibility to respect human rights is the principle of avoidance or ‘do no harm’.⁷¹ It is implied in the first objective of PS5: ‘to avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs’.⁷² ‘Respect’ means that business enterprises must not interfere with the enjoyment of human rights. However, the nature of displacement and subsequent involuntary resettlement is such that responsible business enterprises can hardly avoid creating human rights impacts. According to the Basic Principles,

⁶⁶ United Nations/OHCHR, ‘Guiding Principles on Business and Human Rights (2011) 1; United Nations/OHCHR, ‘The Corporate Responsibility to Respect Human Rights. An Interpretive Guide’ (2012) <www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf> accessed 12 April 2016.

⁶⁷ United Nations/OHCHR, ‘Guiding Principles on Business and Human Rights (2011) 13 (emphasis added to quote).

⁶⁸ Ibid 13.

⁶⁹ United Nations/OHCHR, ‘Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie. Addendum. Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations: Guidance for Negotiators’ (2011) UN Doc A/HRC/17/31/Add.3.

⁷⁰ Ibid 2.

⁷¹ United Nations/OHCHR, ‘Protect, Respect and Remedy: a Framework for Business and Human Rights’, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises’, John Ruggie (7 April 2008) UN Doc A/HRC/8/5, 9, 17.

⁷² IFC, ‘Performance Standard 5’ (2012) 1.

resettlement must not incur detriment or harm concerning affected peoples' human rights, and resettlement cannot result in infringement of people's right to continuous improvement of living conditions.⁷³ Through displacement and resettlement (implying the risk of impoverishment and the loss of essential public services), the responsible operator inevitably interferes in the enjoyment of human rights. Relevant human rights include, inter alia, the right to security and protection of the family, the protection of the rights of the child, collective rights such as the right to self-determination, the right to health and education and the right to an adequate standard of living. These rights are established in various documents including the UDHR, the ICCPR, and the ICESCR. Through a process of human rights due diligence, the responsible business enterprise should identify all the actual and potential human rights impacts relevant in project-induced displacement and develop and implement a RAP to avoid and/or mitigate them.⁷⁴ In effect, this is what the IFC advocates through its resettlement policies and handbooks.

Challenges in a developing country context

There are many interesting aspects when considering the human rights issues in situations of PIDR in developing country contexts. The first of these relates to the power of eminent domain. All governments can use this power to obtain land and evict persons when it is in the 'public interest'.⁷⁵ However, what is accepted as being in the 'public interest' differs between jurisdictions. Under international human rights law, to protect the rights of project-affected peoples, governments should impose obligations on private actors through their domestic legislation.⁷⁶ According to John Ruggie, many governments were unable to adequately protect their populations against the harmful acts of business.⁷⁷ National legislation that should safeguard the rights of affected peoples may be absent or may not conform to international

⁷³ UNHRC, 'Basic Principles and Guidelines on Development-Based Evictions and Displacement' (2007) 12, Principle 56.

⁷⁴ United Nations/OHCHR, 'Guiding Principles on Business and Human Rights' (2011) Principle 17 describes a human rights due diligence process.

⁷⁵ Björn Hoops, 'The Public Purpose for the Expropriation of Land: A Framework for Assessing Its Democratic Legitimacy' 1-39 in B Hoops, EJ Marais, H Mostert, JAMA Sluysmans, LCA Verstappen (eds), *Rethinking Expropriation Law I: Public Interest in Expropriation* (Boom Eleven International Publishing 2015) <<http://ssrn.com/abstract=2539026>> accessed 12 April 2016.

⁷⁶ United Nations/OHCHR, 'Guiding Principles on Business and Human Rights' (2011) Principle 1.

⁷⁷ United Nations/OHCHR, 'Protect, Respect and Remedy: a Framework for Business and Human Rights' (2008) 3.

standards such as the IFC and the Basic Principles.⁷⁸ At the project level, human rights violations are often the direct result of ignored or insufficiently addressed adverse social and environmental impacts, as well as a lack of community engagement and participation.⁷⁹ Project operators have often not properly performed environmental and social impact assessments.⁸⁰ Furthermore, limited institutional capacity (i.e. institutions not having the financial means and/or adequate human resources) leads to laws not being enforced.⁸¹

National land tenure systems often do not recognise the claims of people with unofficial land titles. The Special Rapporteur on the Right to Food concluded that the unofficial land titles of many rural communities created ‘legal uncertainty’ with regard to their eligibility for compensation. In many developing countries, land users have no property titles and therefore ‘[...] will not have access to legal remedies, and receive adequate compensation, if they are evicted from the land they cultivate, for instance after the government has agreed that foreign investors take possession of the land’.⁸² In many African and Asian countries, the majority of the population comprises smallholders including rural, tribal and/or pastoralist communities dispersed over a large territory.⁸³ Their livelihood strategies are dependent upon continued access to natural resources, e.g. livestock grazing, use of firewood, fishing and hunting. In cases of land-based livelihoods, projects adhering to international standards should consider appropriate compensation, which in effect means land for land.⁸⁴ In practice, the restoration of land-based livelihoods has proven to be extremely difficult because of the scarcity of land around project areas. In many situations, people are relocated to land that is not of the same quality as before, and therefore subsistence lifestyles are difficult to sustain.⁸⁵

⁷⁸ Catholic Commission for Justice and Peace, ‘Land Displacement, Involuntary Resettlement, and Compensation Practice in the Mining Sector. A Comparative Analysis of Legal and Policy Frameworks in Southern Africa’ (2014) <www.ecmmw.org/new/wp-content/uploads/2014/12/Report-on-Land-Displacement-Involuntary-Resettlement-and-Compensation-Practices.pdf> accessed 12 April 2016; Michael Cernea and Hari Mohan Mathur (2007).

⁷⁹ Michael Wright, ‘Corporations and Human Rights: A Survey of the Scope and Patterns of Alleged Corporate-Related Human Rights Abuse’, Working Paper of the Corporate Social Responsibility Initiative (Harvard University, April 2008) 22-26 <www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_44_Wright.pdf> accessed 12 April 2016.

⁸⁰ Ibid 22-26.

⁸¹ United Nations/OHCHR, ‘Protect, Respect and Remedy: a Framework for Business and Human Rights’ (2008) 6 (14).

⁸² UNHCR, ‘Report of the Special Rapporteur on the Right to Food’ (2009) para 23.

⁸³ Klaus Deininger and Derek Byerle, ‘Rising Global Interest in Farmland. Can it Yield Sustainable and Equitable Benefits?’ (The World Bank 2013) <<http://siteresources.worldbank.org/DEC/Resources/Rising-Global-Interest-in-Farmland.pdf>> accessed 12 April 2016.

⁸⁴ IFC, ‘Performance Standard 5’ (2012) 5.

⁸⁵ Cernea and McDowell (2000) Chapter 3; Reddy, Smyth and Styn (2015) 9, 173.

Indigenous peoples have specific rights under the UNDRIP⁸⁶ and ILO Convention 169.⁸⁷ These comprise the right to self-determination and the derived right of FPIC. However, there are conflicting points of view between governments, private operators and Indigenous peoples with regard to how FPIC should be interpreted and respected, which has resulted in weak implementation of FPIC for Indigenous peoples.⁸⁸ The current dominant development paradigm (that of neo-liberal growth strategies) is often in conflict with the type of development Indigenous peoples wish to pursue, particularly in relation to large-scale projects such as extractive industry projects and dams.⁸⁹ While some companies and governments argue that in currently under-served areas, local communities benefit from the enhanced provision of essential services that tends to accompany large projects, most Indigenous organizations emphasise the adverse effects of projects on their environment, culture and societies, which they consider have outweighed the minimal benefits that might arise from improved access to essential services.⁹⁰ The improved access to essential services might not be sufficient to mitigate the adverse impacts on peoples' natural environment, which can imply violations of their rights to culture, health, and self-determination.

A case study of project induced displacement and resettlement in Mozambique

Background to the Mozambican context

Mozambique is increasingly attracting large-scale industries, particularly extractive industries and large-scale agriculture.⁹¹ Mozambique has experienced foreign investment in the extractive sector since 2006 when significant amounts of coal were discovered in the Province of Tete. Recently, gas discoveries along the coastline have also attracted foreign investment, with several liquefied natural gas (LNG) projects in

⁸⁶ UNGA, 'United Nations Declaration on the Rights of Indigenous Peoples' (2007).

⁸⁷ ILO Convention No 169 (Indigenous Peoples).

⁸⁸ UNGA, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples' James Anaya (6 July, 2012) A/HRC/21/47 12 (45,47); Philippe Hanna and Frank Vanclay, 'Human Rights, Indigenous Peoples and the Concept of Free, Prior and Informed Consent' (2013) 31 Impact Assessment and Project Appraisal 146.

⁸⁹ UNGA, 'Report of the Special Rapporteur on the Right of Indigenous Peoples' (2011).

⁹⁰ Ibid 13 para 52-55.

⁹¹ African Development Bank Group, 'Mozambique' (2015) 3.

the Province of Cabo Delgado.⁹² Agricultural projects, for example ‘ProSavanna’, intend to transform local farming practices into a large-scale commercial industry.⁹³ Large-scale projects especially displace communities with land-based livelihoods.⁹⁴ The socio-economic situation in these rural locations is one of relatively high poverty and limited access to essential public services. Some 55 percent of the country’s population live below the poverty line, and the life expectancy at birth is only 55 years.⁹⁵ In 2014, the country’s population was approximately 27 million⁹⁶ of which about 70 percent was defined as rural;⁹⁷ 43 percent had access to safe water; 19 percent to adequate sanitation; and approximately 15 percent of households had access to electricity, most of which were in Maputo (the capital) and surrounding areas.⁹⁸ Public healthcare is subsidized by the government and is free for all citizens, although due to a lack of skilled personnel is very limited, especially in rural areas.⁹⁹

The legal framework governing resettlement draws on the Constitution of Mozambique,¹⁰⁰ the Land Law,¹⁰¹ the Mining Law,¹⁰² the Environmental Law,¹⁰³ the Law of Territorial Planning,¹⁰⁴ the Law on the Protection of Cultural Heritage,¹⁰⁵ and

⁹² ICF International, ‘The Future of Natural Gas in Mozambique: Towards a Gas Master Plan’ (2012) <www.ppiaf.org/sites/ppiaf.org/files/publication/Mozambique-Gas-Master-Plan-executive-summary.pdf> accessed 12 April 2016.

⁹³ ProSavanna <http://www.prosavanna.gov.mz/?num_lang=2> and a critique <<https://www.grain.org/article/entries/4626-brazilian-megaproject-in-mozambique-set-to-displace-millions-of-peasants>> accessed 12 April 2016.

⁹⁴ Republic of Mozambique, Decree 31/2012 (2008) 2; UNHCR, ‘Report of the Special Rapporteur on Extreme Poverty and Human Rights’ (2014) 6.

⁹⁵ World Bank, ‘Mozambique. World Development Indicators’ <<http://data.worldbank.org/country/mozambique>> accessed 12 April 2016.

⁹⁶ Ibid.

⁹⁷ International Development Association, International Finance Corporation and Multilateral Investment Guarantee Agency, ‘Country Partnership Strategy fy12-15 for the Republic of Mozambique’ (2012) <www.wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2012/03/14/000386194_20120314004707/Rendered/PDF/668130CAS0P1240Official0Use0Only090.pdf> 3.

⁹⁸ Ibid 20.

⁹⁹ Ibid 22.

¹⁰⁰ Constitution of the Republic of Mozambique (1990) <[http://confinder.richmond.edu/admin/docs/Constitution_\(in_force_21_01_05\)\(English\)-Mozlegal.pdf](http://confinder.richmond.edu/admin/docs/Constitution_(in_force_21_01_05)(English)-Mozlegal.pdf)> accessed 12 April 2016.

¹⁰¹ The Land Law No. 19/97 (1 October, 1997) <<http://www.doingbusiness.org/~media/FPDKM/Doing-Business/Documents/Law-Library/Mozambique-Land-Law-Legislation.pdf>> accessed 12 April 2016.

¹⁰² The Mining Law No. 20/2014 (18 August) <www.vda.pt/xms/files/Newsletters/2014/Mozambique_-_Mining_Law_Fianl.pdf> accessed 12 April 2016.

¹⁰³ The Environmental Law No. 20/97 (1 October, 1997) <www.lexadin.nl/wlg/legis/nofr/oeur/lxwemoz.htm> accessed 12 April 2016.

¹⁰⁴ The Law of Territorial Planning No. 17/2007 (18 July 2007) <<http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwemoz.htm>> accessed 12 April 2016.

¹⁰⁵ The Law on Protection of Cultural Heritage 10/88 (22 December 1988) <www.wipo.int/wipolex/en/details.jsp?id=6042> accessed 12 April 2016.

the Regulations for the Protection of Archaeological Heritage.¹⁰⁶ These laws recognize customary land titles and require the payment of fair compensation to affected communities. The land is the property of the State, which means that the State determines the conditions of its use and benefit by individuals and/or corporate entities.¹⁰⁷ Under the Mining Law, mineral resources are the property of the State. The Constitution and the Land Law reserve the right to expropriate when minerals can be economically exploited (either by foreigners or nationals). Article 82(2) of the Constitution states; '[e]xpropriation may take place only for reasons of public necessity, utility, or interest, as defined in the terms of the law, and subject to payment of fair compensation'.¹⁰⁸ In 2012, the Government of Mozambique (GoM) approved Regulations for Resettlement stipulating the rules and principles of a resettlement process.¹⁰⁹ In these Regulations, the GoM transfers responsibility to the proponent of all the costs involved, the physical implementation of the RAP, and most of the management of the resettlement process.¹¹⁰ The Regulations defines resettlement as '[...] the displacement or transfer of the affected population from one point of the national territory to another, accompanied by the re-establishment or creation of conditions equal to or above their previous standard of living.'¹¹¹ Article 5 defines the purpose of resettlement as '[...] stimulating the socio-economic development of the country and guaranteeing a better quality of life of the affected population and social equity, taking into account the sustainability of the physical, environmental, social and economic aspects.'¹¹² The government specifies the conditions that must be met, including the provision of improved housing, ensuring that areas are reserved for cattle, enabling subsistence practices to be maintained, and the establishment of public facilities and services.¹¹³ Resettlement projects in Mozambique have been the subject of several human rights enquiries. Southern Africa Resource Watch,¹¹⁴ Human Rights

¹⁰⁶ Regulations for the Protection of Archaeological Heritage, Decree No. 27/94 (20 July 1994) <www.lexadin.nl/wlg/legis/nofr/oeur/lxwemoz.htm> accessed 12 April 2016.

¹⁰⁷ The Land Law No 19/97 (1997) Chapter 2, Article 3 and Chapter 3, Article 10.

¹⁰⁸ Constitution of the Republic of Mozambique (1990) Article 82 (2).

¹⁰⁹ Republic of Mozambique, Decree (2012).

¹¹⁰ Ibid Chapter 1, Article 11.

¹¹¹ Ibid Article 1.

¹¹² Ibid, Chapter 1, Article 5.

¹¹³ Ibid Article 16.

¹¹⁴ Southern Africa Resource Watch, 'Coal versus Communities: Exposing Poor Practices by Vale and Rio Tinto in Mozambique' <www.osisa.org/sites/default/files/coal_vrs_communities_in_mozambique_0.pdf> accessed 12 April 2016.

Watch,¹¹⁵ and Oxfam¹¹⁶ have expressed their concerns about the negative impact of resettlement on the affected communities' livelihoods. Also, the Special Rapporteur on Extreme Poverty and Human Rights visited Mozambique in April 2013 and commented that recent development projects have compromised the human rights of displaced communities including the rights to water, food and work.¹¹⁷ The Regulations were criticized by Human Rights Watch for not conforming to international and national constitutional human rights standards.¹¹⁸ Human Rights Watch recommended that the Regulations should contain an explicit commitment to avoid resettlement, as well as full and informed consent regarding relocation. Also, Human Rights Watch argued that the Regulations should put stronger focus on restoring and improving the standards of living of affected peoples including their access to services such as healthcare and education, and that the right to remedy should be better guaranteed through accessible grievance mechanisms.¹¹⁹

The actual experience of a specific resettlement project in Mozambique

Here we describe an actual example of how access to essential services at a resettlement site was provided and below we consider the challenges faced. We describe a real but anonymised example of a resettlement project undertaken in the province of Tete in northern Mozambique. Some 2,500 villagers were resettled as part of the land acquisition needed for a large coal mine. The new village is about 50 kilometres away from their original village and 65 kilometres from the main city (Tete) and markets. Prior to the resettlement, a Social Impact Assessment (SIA) was conducted, describing the livelihoods and income activities of the communities, and identifying the potential adverse impacts of the economic and physical displacement created by the project.

¹¹⁵ Human Rights Watch, 'What is a House without Food? Mozambique's Coal Mining Boom and Resettlements' (2013) <[http://reliefweb.int/sites/reliefweb.int/files/resources/What is a House without Food.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/What%20is%20a%20House%20without%20Food.pdf)> Accessed 12 April 2016.

¹¹⁶ Oxfam, 'Mining, Resettlement and Lost Livelihoods. Listening to the Voices of Resettled Communities in Mualadzi, Mozambique' (2015) <http://reliefweb.int/sites/reliefweb.int/files/resources/mining-resettlement-and-lost-livelihoods_eng_web.pdf> accessed 12 April 2016.

¹¹⁷ UNHCR, 'Report of the Special Rapporteur on Extreme Poverty and Human rights' (2014) 6.

¹¹⁸ Human Rights Watch, 'Human Rights Watch Recommendations for Mozambique's Resettlement Decree' (2012) <www.hrw.org/news/2012/09/17/human-rights-watch-recommendations-mozambique-s-resettlement-decree> accessed 12 April 2016.

¹¹⁹ Ibid.

The livelihoods of the affected peoples at the original village were predominantly land-based, comprising subsistence farming and economic activities, such as brickmaking and stone-crushing, with products sold at the nearby market, as well as other seasonal and informal cash-earning activities. The nearby river was of much importance for washing, drinking water, and a social meeting place especially for youth, women and children. The river also provided the mud necessary for making bricks. A typical house had walls made of sticks and daub, with floors of mud and earth, and a thatch roof. The village contained a primary school and an orphanage. The closest health facility and secondary school were located in another village about 3 kilometres away. The health centre provided basic health and maternity care, with very limited means and equipment. Between 30 to 40 percent of adult people had received some formal education, while the remainder were illiterate, with a significantly higher illiteracy rate amongst women. People in this and surrounding villages were reported to face regular food shortages of about three months each year, typically in the dry season.

The adverse impacts of displacement identified in the SIA included: the loss of livelihoods through loss of annual crops, fruit trees, perennial crops and shade trees; the loss of houses and other dwelling structures; a loss of spiritual sites; and a loss of access to community and public facilities and services. Although the project was not financed by the IFC or World Bank, the company's objective was to comply with IFC requirements. A RAP including a livelihood restoration plan was developed identifying actions to mitigate and compensate for the impacts, including construction of a new village at a new site. The GoM and community leaders played a leading role in site selection, selecting an area with low population density far from the original village. Approximately 2,500 people were resettled to an area where only four families previously lived and where public health and education facilities were not easily accessible. The philosophy was that communities already living in the area (i.e. the host community) should also benefit from the resettlement project and any facilities constructed. This is in accordance with IFC PS5, which requires that all mitigation measures should cover impacts experienced by all affected persons including the host community.¹²⁰

¹²⁰ IFC, 'Performance Standard 5' (2012) 5.

By improving access and quality of healthcare and education for the host community and possibly the region as a whole, resettlement can contribute to progressively realizing human rights. However, there is a contradiction in that, due to limited land availability and host community considerations, distant sites tend to be selected for resettlement locations, which can reduce access to markets, employment, family, education, places of spiritual significance, and health care for the affected people. This arguably has a negative affect on their human rights.

The company was required by the GoM to pay for all expenses of the resettlement including compensation to affected families and the construction of replacement housing (to superior quality) and new public facilities. In line with the IFC standards¹²¹ and conditions set by the GoM, as part of their compensation, the resettled people received one hectare of land fully prepared for agriculture, together with appropriate equipment and materials to start farming. They also received financial compensation (equivalent to USD 4,000 per household) paid into their bank account. The intention was for them to use this funding to enable them to acquire additional agricultural land or to invest in alternative livelihood activities such as establishing new business enterprises, purchasing livestock, or investing in machinery. In addition to a RAP, a livelihood restoration plan was developed by the company and contained a range of social projects to support resettled people in building their capacity regarding agricultural practices and livestock breeding. This is also in compliance with the IFC, which requires its clients to establish programs to support affected communities so that they are able to restore and improve their livelihoods and levels of income.¹²²

In line with the IFC requirement to ensure adequate and improved housing, the new village included a range of houses from one to four bedrooms in size. Consistent with local cultural expectations, most had external kitchens and latrines. They were constructed from cement blocks, with corrugated iron roofing, cement floors, and the walls were plastered. The new dwellings were perceived by the company and the GoM as being a significant improvement over the old dwellings. This can be regarded as

¹²¹ IFC, 'Performance Standard 5' (2012) emphasises the need for in kind compensation, especially in a situation of displacement of land-based communities. In this case study, the company together with the GoM provided communities with replacement land with the objective to enable them to continue their subsistence activities. It also provided some financial compensation. This is in line with the GoM Resettlement Decree 31/2012 (8 August 2012) which requires that communities can continue their subsistence activities in the new area.

¹²² IFC, 'Performance Standard 5' (2012) 4.

fulfilling the right to adequate housing and security of tenure, as all affected persons received an improved house in comparison to the previous situation, and they would also receive legal land use titles (referred to in Mozambique as DUAT)¹²³ for the residential plots. A range of public services required by the GoM were also constructed by the company, including a primary school, a health centre, an orphanage, water supply, electricity, police station, public administration offices and government employee housing. The facilities were built with the objective of improving the quality of the facilities compared to the previous situation, which is an attempt to fulfil human rights, especially through improving access to health and education.

The primary school was fully equipped by the company in line with GoM requirements (including computers and printers). In the original village, there had been only very inadequate facilities and children were being taught under the tree. The new school building was constructed to cater for an expected increase in the number of students.

The company also built appropriate houses and supplied furniture and electronic whitegoods for the teachers and other staff. The GoM determined that the construction of a secondary school was not necessary because, consistent with the national planning standards for educational facilities, a secondary school was available in the neighbouring village five km away. A rural health centre was constructed and furnished with the latest technology, some of which are superior to what existed in the main hospital in the regional centre. Two fully furnished houses for health personnel were also constructed. The modern medical equipment provided for the clinic should have enabled the nurses to treat more complicated conditions than was the case at the previous village, as well as catering for childbirth.

Challenges to restoring or improving access to essential public services

There were two main aspects of this resettlement project that particularly hampered longer-term restoration of access to essential public services. First, the chosen location was at a much greater distance from the major city and its public services (e.g. hospital, university, market), as well as from natural resources (e.g. the river for reliable access to water for cleaning, drinking, washing, social life). At the new village, the community is

¹²³ The Land Law No 19/97 (1997).

now about 65 kilometres away from the main city as opposed to ten kilometres previously. Below we discuss how, despite improved services in the village, this distance contributes to negative human rights impacts. Second, we highlight the issue of the maintenance of the buildings and equipment in ensuring access in the long term. Originally the company was responsible for maintenance of the infrastructure, but the handover to the GoM poses a significant challenge for the maintenance of the services, due to high costs and limited government capacity.

Despite the improved quality of the services, the actual experience of access for the affected villagers was problematic because of the increased distance of the new village from the main city. In the new village, and throughout Mozambique, rural health centres are only staffed by nurses. Thus, when a person in the new village suffers from a serious condition requiring the attention of a doctor, he or she now has to travel a much longer distance to the city, resulting in higher costs and greater inconvenience. This was especially the case immediately after the resettlement when the road to the city was unpaved and in very poor condition. Due to the increased distance, it will also be more difficult for the resettled youth to have access to education, especially at university level. The teachers and nurses who previously worked in the old village (close to the main city) may not be able or willing to move to the new village. In a context of nationwide skill shortages, to avoid the risk that nurses and teachers would not be willing to work in the new location, the company built attractive, fully-furnished houses for the nurses and teachers. However, despite this, it has been observed that the nurses and teachers tend to maintain their families in the main city and commute. This means that such personnel are not always available, especially during weekends.

In this resettlement, the quality of housing of affected families and the quality of education and health facilities were significantly improved, and thereby the company went beyond the responsibility to respect human rights¹²⁴ and attempted to fulfil human rights. However, other human rights issues were encountered due to the chosen location of the resettlement site. The distance obstructed access to the city and the ability of families to access markets, to look for job opportunities, or undertake other economic activities, visit relatives, etc. Also, in the new village, even though the company

¹²⁴ United Nations/OHCHR, 'Guiding Principles on Business and Human Rights' (2011).

constructed a modern pumping system, sustainable water supply turned out to be a concern. The resettled community struggled to restore their agricultural activities, which caused an impact on fundamental human rights such as the right to food, health and water. This experience shows that when human rights are not considered holistically and/or systematically, one human right can be restored or even fulfilled, while other human rights can still be violated. Thus, restoring and improving housing and access to essential services in resettlement contexts is only half of the human rights picture. The criteria of the right to adequate housing, which clarifies that adequate housing is more than building four walls and a roof, requires consideration of other relevant aspects such as location and access to work, water and services.¹²⁵

The company will gradually hand over the responsibilities of management and maintenance of the resettlement site to the government at the district level. When the operation and maintenance costs of the facilities fall under the responsibility of the government, the question becomes whether the government will continue to cover such costs, given that they exceed the services provided to other communities. This is problematic because the facilities were provided by the company as part of the compensation package for resettlement and also as part of livelihood restoration/improvement programs. For example, to substitute for water from the river, a sophisticated groundwater supply system was built in the new village and has been maintained by the company. It comprises 11 boreholes equipped with electric pumps, automated control system, chlorination plant, storage tanks and a distribution network with 18 communal standpipes. The costs of operating and maintaining such a system – especially when in a few years’ time replacement capital will be required – are likely to be well above the standards for other rural areas of Mozambique. Also, the modern equipment provided for the schools and health care centre create extra costs in the form of the salaries of the additional personnel that are needed including security guards, cleaners and technicians. Their salaries are now paid by the company, but the local government might not continue paying their salaries. Without these personnel, there is an additional risk that the facilities and equipment will not be maintained and protected.

¹²⁵ OHCHR, ‘General comment No. 4: The right to adequate housing’ (1991).

The company focussed largely on the physical construction of the essential services, whereas livelihood restoration and improvement requires more thinking and cooperation with local communities, civil society and the government in order to ensure longer-term access. Therefore, it is important to have established a clearly defined contract between the company and the government with regard to how the facilities will be maintained, as suggested by John Ruggie.¹²⁶ It is an important part of the corporate responsibility to respect human rights that resettled communities are not simply left with new and/or improved facilities, but that there is a plan that supports actual access, so that the human rights of affected people are not compromised by the possible deterioration of the services over time. This is of importance to companies, as they are required by the IFC to conduct a monitoring exercise in order to capture whether the resettled families were in fact able to restore various aspects of their livelihoods in the new village, and when necessary to develop a corrective action plan.¹²⁷ Monitoring is also important for compliance with the corporate responsibility to respect, requiring under Principle 20 that companies should track the effectiveness of their responses to address human rights impacts.¹²⁸ Essentially, a successful resettlement implies that projects have avoided, mitigated and remedied all human rights harms experienced by communities and to ensure that they are in fact better off than before the project.

Conclusion

The IFC Performance Standard 5, the main international standard applying to project-induced resettlement, does not refer to the corporate responsibility to respect human rights, and the objectives and requirements in PS5 are not articulated in human rights terms. Regarding the human rights requirement to ensure adequate housing and security of tenure, PS5 does refer to the Basic Principles, but it does not explicitly discuss these requirements in human rights terms. PS5 requires that, through improved housing, the standards of living of displaced persons are to be improved. Restoring and improving the quality and/or quantity of essential public services is not specifically stated as one of PS5's main objectives. Its accompanying guidance note (GN5) refers to the need to

¹²⁶ John Ruggie, 'Addendum. Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations: Guidance for Negotiators' (2011).

¹²⁷ IFC, 'Performance Standard 5' (2012) 5.

¹²⁸ United Nations/OHCHR, 'Guiding Principles on Business and Human Rights' (2011) 22-23.

replace lost social services, but does not provide further details on such plans. However, we consider that the extent to which access to essential public services is disrupted by resettlement, and what should be done to restore and improve access, must be addressed in every resettlement situation, and should be an important component of livelihood restoration. Currently, the IFC emphasises providing compensation for individuals and families as well as ensuring adequate housing. There is a need for more guidance for how companies should restore access to essential services in order to respect the right to health, education, and work.

The IFC PS5 should be updated to include the responsibility to restore and/or improve access to essential public services in resettlement sites. Successfully restoring and improving access to essential services, along with other fundamental aspects such as access to land and markets, are essential to restore and improve affected peoples' livelihoods. In most developing countries, there is a substantial deficiency in the availability and quality of services. Therefore, resettlement must be seen in terms of a development opportunity, particularly in rural and remote areas. When proponents have a responsibility under the IFC and/or national legislation to provide the financial resources and construct the necessary services, this is an opportunity to address poverty issues in the area where resettlement takes place. In principle, therefore, resettlement should contribute to the progressive realisation of human rights.

On a more critical note, to comply with international standards, companies are likely to build housing and other infrastructure using technology and equipment without considering the local government's capacity to sustain these services and infrastructure into the future. We conclude from our case study that the ongoing management of the resettlement village and maintaining access to essential public services will likely incur a significant cost on the Mozambican government into the future. Although in Mozambique the government has the dominant role in determining what should be provided by a company, it might not have realized that the fully-equipped schools and health clinics it requires companies to provide, as well as any electronic water pumps and other gadgets, are likely to become a financial burden on local government budgets in the future. We expect that, in a few years' time, the essential services in the resettled village will deteriorate. Attempts to fulfil human rights by constructing and providing

better equipped buildings becomes particularly challenging once project construction is completed and when the company is no longer responsible for maintenance costs.

The planning and construction of a resettlement village, including any agreed exit date of the company, therefore must be better considered to guarantee the sustainability of any services constructed. Responsible proponents have to make a serious commitment to perform resettlement according to international standards, including providing sufficient financial and human resources over an agreed period of time. These arrangements also need to be discussed with the affected communities to create a degree of ‘ownership’ and to establish how they might be able to contribute to maintaining the services. Communities and the government need to realize that the constructed facilities are not mere gifts, but can be an essential part of the future wellbeing of the community requiring maintenance for which they are responsible. Therefore, improving the capacity of the district government to take on the maintenance of services and infrastructure is key to the long-term access to essential public services in a resettlement village. In order for resettlement site facilities to be sustainable in the longer term, the IFC should give more attention to the effective management of the hand-over process from the proponent to the government.

Resettlement is much more than a rehousing project in which adequate housing and security of tenure are regarded as the only areas of attention – the restoration of access to public services, such as education, health, potable water, as well as to community services (culture and spiritual practices) and common resources (forests, rivers, land), need to receive proper attention by the government, project proponents and financial institutions.

Chapter4

A Human Rights Based Approach to project-induced displacement and resettlement



Photo 4. Two women are explaining how an agriculture livelihood restoration project is benefitting them, Nampula, Mozambique, 2015

A Human Rights Based Approach to project-induced displacement and resettlement

Abstract

Respecting, protecting and fulfilling human rights must become more prominent in both the processes and outcomes of resettlement. We have developed a Human Rights Based Approach to Resettlement (HRBAR) for use by project operators, rights holders and governments so that they can better understand what the corporate responsibility to respect human rights entails in situations of involuntary resettlement and expropriation. We outline the procedural human rights principles and resettlement outcomes that must be achieved in order for resettlement to be considered human rights compliant. We also consider how human rights are addressed in the International Finance Corporation Performance Standard 5 on land acquisition and involuntary resettlement. We suggest that the IFC's largely silent approach towards the private sector's human rights responsibilities potentially understates the significant human rights risks that characterize displacement and involuntary resettlement.

Keywords: Development induced displacement and resettlement; human rights impact assessment; social impact assessment; forced eviction; livelihood restoration and enhancement; human rights risks

Introduction

Around the world, development projects have led to an estimated 10 to 15 million people being displaced every year (Terminski, 2015). From the 1980s on, international financial institutions have adopted practice standards that typically require the livelihoods of displaced people to be restored and preferably improved. Noteworthy are the International Finance Corporation (IFC) Performance Standard 5 on Land Acquisition and Involuntary Resettlement (IFC, 2012a); the World Bank Operational Policy 4.12 on Involuntary Resettlement (World Bank, 2016a); the standards of the African Development Bank (AfDB, 2003), the Asian Development Bank (ADB, 1995), and the Inter-American Development Bank (IDB, 1998). Other multilateral development banks (e.g. EBRD, EIB) have also developed similar policies. Furthermore, over recent years, many countries have introduced or updated their national resettlement policies, notably India, Mozambique and Sri Lanka (Perera, 2014).

The unanimous adoption by the United Nations Human Rights Council in 2011 of the *United Nations Guiding Principles on Business and Human Rights* (UNGPR) (United Nations, 2011a) has led to a growing awareness of the human rights responsibilities of business enterprises (O'Brien and Dhanarajan, 2016). Involvement in human rights violations and abuse now constitutes a business risk for companies (Kemp and Vanclay, 2013; Franks et al. 2014; Vanclay et al. 2015). This is recognized by many companies, particularly multinational enterprises, as evidenced by their adoption of policy statements and procedural guidelines (BHRRC 2016), and sometimes guidance documents on human rights (see for example Rio Tinto, 2013). There has also been much attention given to the development of methodologies for project-based human rights impact assessment (Götzmann, 2014; Götzmann et al., 2016; van der Ploeg and Vanclay, 2017). A major social and human rights risk for companies comes from the need to undertake resettlement in order to be able to satisfy land acquisition requirements (Vanclay and Kemp, 2017). To manage the risks, companies need to understand how to comply with their human rights responsibilities when resettlement is undertaken. There is a need to consider whether existing international resettlement standards and industry practice are in line with international human rights standards and expectations (United Nations, 2015; Owen and Kemp, 2016).

There are only a few publications about human rights in the context of project induced displacement and resettlement. Those that exist tend to focus on the involuntary nature of the

resettlement and how this itself may constitute a violation of human rights (e.g. Morel, 2014; Hoops et al., 2015; Tagliarino, 2016). Expropriation and involuntary resettlement are contrary to fundamental human rights such as the right to freedom of movement and choice of residence, the right to private and family life, the right to property, and the right to housing (Terminski, 2015; Morel, 2014; Penz et al., 2011). In addition, the right to self-determination, which allows Indigenous peoples to choose their own development path, can be adversely impacted by land acquisition that requires Indigenous peoples to move away from their traditional lands and homes, which in turn affects their livelihoods, personal and spiritual attachments (Anaya, 2004, 2005; de Schutter, 2009; Hanna et al., 2014). From a legal and human rights perspective, expropriation and involuntary resettlement can only be justified when: (1) the project is in the public interest (substantiated by justification and as determined by established procedure); (2) the principle of proportionality is satisfied (when the harm created is proportional to the benefits that derive from the project); (3) when due process has been observed (affected people have adequate access to legal advice and the ability to challenge the decision); and (4) the affected people have been given full and fair compensation (that they are not worse off) (Hoops et al. 2015; United Nations 2014b; BverfG, 2013).

The purpose of this paper is to outline the rights of project-affected peoples and discuss how human rights should be respected in resettlement procedures and outcomes. We specifically focus on the responsibilities of private operators in project induced displacement and resettlement. Private actors have a corporate responsibility to respect human rights, which encompasses many human rights principles and standards. Even where project proponents have obtained legal rights over land (by government grant or market acquisition), any displaced families and communities have human rights under international law that must be fully respected and fulfilled by project proponents and contractors (de Schutter, 2009). In practice, in some if not all countries, meeting these international obligations will likely require exceeding the specifications of the national legal context (United Nations, 2011a).

By drawing on a range of key international human rights documents and instruments, we outline a Human Rights Based Approach to Resettlement (HRBAR). We clarify and describe the relevant human rights and human rights principles regarding resettlement procedures and outcomes. We contrast the HRBAR against the requirements of the IFC Performance

Standard 5 on Land Acquisition and Involuntary Resettlement (IFC, 2012a), considered the gold standard for private operators in resettlement practice (Reddy et al., 2015; Vancley and Kemp, 2017), and make recommendations for how the IFC objectives could be made consistent with a human rights perspective.

Key terms and concepts

Human rights are commonly understood as being those “inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being” (Sepuldeva et al., 2004, p.3). They are widely accepted as being generally-agreed values and exist to ensure human dignity and the fulfilment of basic human needs. Human rights are characterized as being universal and inalienable (all people are entitled to them); indivisible (human rights all have equal status and cannot be ranked); and interdependent and inter-related (the realisation of one right often depends on the realisation of others) (HRBA Portal, 2016). Human rights become established by international law, and are articulated in international treaties and court rulings. Box 1 provides a listing of some of the human rights that are implicated in resettlement actions.

Box 1. List of human rights that should be considered in resettlement actions

(This is not an exhaustive listing of human rights potentially affected by resettlement.)

- Right to an adequate standard of living and to continuous improvement in living conditions
- Right to culture
- Right to education
- Right to food
- Right to freedom from cruel inhumane or degrading treatment or punishment
- Right to freedom of movement and choice of residence
- Right to freedom of opinion and expression
- Right to health and wellbeing
- Right to housing
- Right to information
- Right to life
- Right to participation
- Right to peaceful assembly and association
- Right to private and family life
- Right to property
- Right to religion
- Right to remedy
- Right to self determination
- Right to water and sanitation
- Right to work
- Rights of the child
- The equal rights of women and men to the enjoyment of their human rights

From a human rights perspective, involuntary resettlement may constitute ‘forced eviction’. Forced eviction is defined as: “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (United Nations, 2014b, p.3). Forced eviction is prohibited under international law particularly when: there are no safeguards (i.e. legal and other protections) provided to affected people; adequate alternative housing and adequate compensation and/or replacement productive land are not provided; or the eviction is executed without due process (United Nations, 2014b). Forced eviction is a gross violation of human rights and, where people are rendered homeless, specifically the right to adequate housing (United Nations, 2014b). In some cases, the resettlement of affected peoples has resulted in the deprivation of their rights to food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, or freedom of movement (United Nations, 2007a, 2014b; Wright, 2009).

People who have been subject to forced eviction, including in situations of project induced displacement and resettlement, can be regarded as being internally displaced persons (IDPs) (United Nations, 2014b). IDPs are people “who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, *violations of human rights or* natural or human-made disasters, and who have not crossed an internationally recognized State border” (United Nations, 1998, p.5, emphasis added). Large-scale projects would create people who qualify as being IDPs in any situation where expropriation or involuntary resettlement was enacted and there was not a compelling case of public interest or due process (see also Robinson, 2003). In such situations, even if quality replacement housing was provided, people relocated could still be regarded as IDPs (United Nations, 2014b).

According to the United Nations (2014b) (see also Morel, 2014), evictions are permissible, but only in very specific circumstances. To be permissible, evictions must be fully justified and only carried out in exceptional circumstances when all feasible alternatives to eviction have been fully considered. The project requiring the eviction must be clearly in the public interest, and there must be appropriate proportionality and reasonableness. Where people are legally evicted, the *United Nations Basic Principles and Guidelines on Development-Based*

Evictions and Displacement (here after: Basic Principles) (United Nations, 2007a, p.6) provides for a right to be resettled “which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential public services such as health and education”. In resettlement, due process must be applied. This requires that there be adequate consultation and the participation of the affected community, and that appropriate legal protections are in place. The Basic Principles also require that an eviction impact assessment be undertaken so that the likely consequences of the eviction can be assessed in advance, and there must be a monitoring process. Adequate grievance mechanisms must be provided and evictions must not be carried out in a discriminatory manner, and must pay careful attention to people who are vulnerable. So, for any eviction to be permissible, the process and outcomes of resettlement must not result in affected people experiencing any detriment to their human rights, and it is intended that they should experience a general improvement in their standard of living (United Nations, 2007a).

In response to the severe impoverishment and trauma that has been caused by project-induced resettlements (see Cernea, 1997; United Nations, 2014b), and especially by groups who were particularly vulnerable (e.g. Indigenous peoples, minorities, informal settlers, people in extreme poverty), in 1980 the World Bank introduced a resettlement policy (World Bank, 2004). Subsequently, the International Finance Corporation (IFC) and many other development banks developed their resettlement policies and procedures, with progressive improvement over time. The 2012 version of the IFC Performance Standard 5 *Land Acquisition and Involuntary Resettlement* (short form IFC PS5) is now considered to be international best practice (Reddy et al. 2015; Vanclay and Kemp, 2017), partly because the IFC Performance Standards are embedded in the requirements for Equator Principles Banks (Vanclay et al., 2015). Within the private sector and amongst resettlement and social performance practitioners, the IFC PS5 represents the common understanding of the concepts, objectives and requirements regarding displacement, involuntary resettlement, and livelihood restoration and improvement (Vanclay and Kemp, 2017).

IFC PS5 (2012a) primarily refers to situations of involuntary resettlement. Technically, resettlement is considered to be involuntary whenever project-affected peoples do not have the right of refusal, or where the government’s power of expropriation can be invoked. In

such situations, the IFC expects that its clients design and implement resettlement to be consistent with the following objectives (IFC, 2012a, p.1-2):

- To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs.
- To avoid forced eviction.
- To anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restrictions on land use by (i) providing compensation for loss of assets at replacement cost and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
- To improve, or restore, the livelihoods and standards of living of displaced persons.
- To improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.

PS5 (2012a) aims to protect affected peoples from the negative consequences of forced eviction. Besides requiring adequate compensation, the IFC objectives entail a promise to affected peoples that their standards of living will be improved at the new resettlement sites. The relocation of people to new locations is intended to result in an improvement in their wellbeing, which means that development projects should bring more equal and balanced outcomes than was previously the case. Thus, projects should contribute to fulfilling the development objectives of sustainability and poverty reduction as represented in the United Nation's sustainable development goals (World Bank, 2013; Smyth and Vanclay, 2017). In this way, development projects are more likely to be socially legitimate and to gain a social licence to operate (Jijelava and Vanclay, 2014a, 2014b). The IFC's resettlement objectives are intended to guide the drafting of a Resettlement Action Plan (RAP) and Livelihood Restoration Plan (LRP), which are required to be developed by each project proponent. The RAP and LRP are the key documents used by project proponents in undertaking resettlement, and should describe the relevant national legal framework, the characteristics of the affected population, the anticipated losses, and the mitigation measures to be implemented. The IFC PS5 does not require that these documents provide any information regarding human rights risks and impacts, or the various relevant human rights that must be respected.

From a human rights perspective, involuntary resettlement must not result in a detriment to project-affected people's human rights, nor should it create obstructions to the right to continuous improvement of living conditions (United Nations, 2007a). Whereas under

international law, governments are the duty-bearers with the primary obligation to respect, protect and fulfil human rights, in project induced resettlements most human rights responsibilities tend to be transferred to (private) project operators (Reddy et al., 2015). The UNGP (United Nations, 2011a) established that companies have a responsibility to respect human rights, regardless of the human rights obligations of governments, and that companies must avoid doing harm. Considering the severity and variety of the human rights risks that characterize project induced resettlement, private operators arguably have a responsibility to contribute to fulfilling human rights (van der Ploeg et al., 2016) in order to bring about socially-desired sustainable development outcomes (World Bank, 2016b). The responsibility to respect and fulfil human rights in resettlement requires that private actors undertake proactive steps to contribute to the enjoyment of the human rights of all affected persons, groups and communities.

The economic and/or physical displacement of project-affected peoples implies the loss of (aspects of) livelihoods. The IFC PS5 (2012a, p.1) describes a livelihood as: “the full range of means that individuals, families, and communities utilize to make a living such as wage-based income, agriculture, fishing, foraging, and other natural resource-based livelihoods, petty trade and bartering”. However, the loss of livelihoods comprises not only economic and physical displacement (loss of income-producing activities and homes), but also social, cultural and spiritual displacement, in effect a loss of place attachment and sense of place (Vanclay, 2002, 2008; Vanclay et al., 2015). Private actors need to understand which human rights are relevant to displacement and the livelihood losses experienced in each situation, and how the human rights principles can be applied in involuntary resettlement procedures (van der Ploeg and Vanclay, 2017). Project operators need to ensure that the actions they undertake in response to the IFC requirements also result in compliance with human rights standards.

The notion of ‘project-affected people’ describes those groups, communities, families and individuals who are economically and/or physically displaced by a project. Project-affected peoples also include the host communities, that is, the communities that receive the people who are being relocated (IFC, 2012a; IFC, 2012b). Typically, host communities are economically displaced to make way for the relocation of people who are physically displaced (Mathur, 2006). For example, the land needed for resettlement sites often requires the expropriation of the land of farmers and may result in their economic if not physical

displacement. Thus, host communities need to be included in compensation and livelihood arrangements and they must have similar access to grievance mechanisms and remedy (World Bank, 2016b).

Because human rights standards establish obligations to protect persons from expropriation and eviction, and explicate how human rights must be respected and fulfilled when these occur, in situations where people experience severe project related impacts and governments or companies are reluctant to resettle people, there may be a right to be resettled that can be claimed by affected people (Marshall, 2009; United Nations, 2011a; Perera, 2014; Terminski, 2015; Kothari and Vasquez, 2015). In addition to the land that is required for the construction of a project, the size of safety buffer zones partly determine the extent of displacement and resettlement that is necessary. The size of buffer zones can be minimized so as to avoid displacement and resettlement, but in avoiding resettlement communities may remain close to the operational site and can therefore experience significant adverse impacts (noise, dust, vibration, pollution) that affect their health and livelihoods (Smyth and Vanclay, 2017). These negative impacts may also have a significant adverse effect on property values, resulting in the inability of families to sell their houses. If families wished to move away, their freedom of movement would therefore be restricted. For example, as an unexpected consequence of conventional gas extraction, in Groningen, the Netherlands, frequent small, local earthquakes have resulted in significant damage to houses and feelings of insecurity (van der Voort and Vanclay, 2015). The prospect of continuing earthquakes has made it practically impossible for families to sell their houses. When these adverse impacts are so significant that they violate human rights (for example the right to health and the right to freedom of movement), there may exist a right to be resettled consistent with international human rights standards (Marshall, 2009; Terminski, 2015).

The Basic Principles (United Nations, 2007a) state that in a situation of eviction, there may be circumstances that allow the return of resettled families and communities. The right to return in project-induced displacement could be claimed, for example, when projects do not proceed in a reasonable timeframe after resettlement has taken place. The right to return also requires that responsible authorities assist families to recover any properties or possessions that were disposed of during the resettlement process (United Nations, 2007a). Also, in situations where expropriated land becomes rehabilitated and is no longer needed for the project (such as in the

context of mining), the farmers that were resettled should have the first priority to return to their previous farmlands if they wish so.

A human rights based approach to resettlement

The corporate responsibility to respect human rights refers to the internationally established human rights, such as those established in the International Bill of Human Rights, and, depending on the specific circumstances, may require the consideration of additional standards (United Nations, 2011a). An analysis of various human rights standards and instruments was undertaken to identify the human rights principles that are relevant for corporate human rights compliance in project induced resettlement procedures and outcomes. The list of instruments and other documents we considered is provided in Box 2. Below we discuss the key points from these instruments and highlight how they apply to resettlement.

Box 2. Human rights instruments and other documents considered in constructing the Human Rights Based Approach to Resettlement

Key Human Rights Instruments and Standards

International Bill of Human Rights, which comprises the:

Universal Declaration of Human Rights (UDHR);
International Covenant on Economic, Social and Cultural Rights (ICESCR); and
International Covenant on Civil and Political Rights (ICCPR)

Convention on the Rights of the Child (CRC)

United Nations Guiding Principles on Business and Human Rights (UNGPs)

United Nations Guiding Principles on Internal Displacement

United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles)

United Nations Declaration on the Rights of Indigenous Peoples

Other key human rights documents

Stamford Agreement (2003) otherwise known as The Human Rights Based Approach to

Development Cooperation: Towards a Common Understanding Among UN Agencies

Voluntary Principles on Security and Human Rights

UN Fact Sheet 9 Indigenous Peoples and the United Nations Human Rights System

UN Fact Sheet 21 The Right to Adequate Housing

UN Fact Sheet 25 Forced Evictions

UN Fact Sheet 34 The Right to Adequate Food

UN Fact Sheet 35 The Right to Water

The Human Rights Based Approach (HRBA) is a conceptual framework for applying a human rights lens in various settings. It is especially applied in a development context (HRBA Portal, 2016). It seeks to not only mainstream human rights, but to make respecting and fulfilling human rights central to the development process and outcomes. The HRBA is based on a philosophy that human rights and development are compatible and mutually-reinforcing. International human rights standards imply that a HRBA be applied in any situation involving evictions, and therefore resettlement (United Nations, 2014b).

The HRBA has been codified in the Stamford Agreement (2003), which was the outcome of a high-level meeting intended to create clarity about what a human rights based approach would comprise (Frankovits, 2006; HRBA Portal, 2016). The Stamford Agreement specified that the objectives of the HRBA are: (1) to further the realisation of human rights; (2) to integrate human rights standards and principles into all activities, by focusing on both processes and outcomes; and (3) to contribute to the development of the capacities of duty-bearers (e.g. governments. and non-state actors) to meet their obligations, and to rights-holders so that they can be empowered to claim and exercise their rights. The HRBA emphasised that human rights principles apply at all stages in a project. This means that the HRBA objectives should drive the development of Resettlement Action Plans.

The *United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement* (United Nations, 2007a) (the Basic Principles) and the *United Nations Guiding Principles on Internal Displacement* (United Nations, 1998) provide guidance on how to address issues associated with internal displacement (and thus project induced resettlement). The *Guiding Principles on Internal Displacement* specifically apply to a range of situations, including cases of ethnic cleansing, armed conflict, disasters, collective punishment, and where large-scale development projects have not been fully justified as being in the public interest. The Basic Principles (United Nations, 2007a) provides more specific assistance in making resettlement procedures, implementation and outcomes compliant with human rights. It established that “no resettlement shall take place until such time as a comprehensive resettlement policy consistent with ... internationally recognized human rights principles is in place” (United Nations 2007a, p.12).

Using the sources mentioned in Box 2, we delineated a Human Rights Based Approach to Resettlement (HRBAR). Below, we identify the human rights that must be respected and fulfilled in relation to: (A) the principles and procedures underpinning resettlement, and (B) resettlement outcomes. Basically, a resettlement process must be guided by human rights principles and the resettlement outcomes must respect all relevant human rights and contribute to their fulfilment.

(A) Human Rights Principles and Procedures

In this subsection, we outline the primary human rights principles and procedures that should be applied in resettlement processes and decision-making in order to respect the dignity and rights of resettled people and host communities.

The resettlement process should ensure the protection of the right to private and family life, and the protection of the rights of the child.

Involuntary resettlement results in affected peoples having to accept significant risks in re-establishing their homes, social relationships, work and subsistence activities, all of which create multidimensional stress (Scudder, 2005, 2011). In the process of being resettled, families and individuals typically become dependent on the company and/or government for their basic needs (Downing, 2002; ICMM, 2016). Often the social cohesion and quality of the relationships between and within families (including between parents and children) are disrupted (Cernea, 1997; United Nations, 2014b). All this creates an increased sense of insecurity, inequality and unfairness.

The right to private and family life is enshrined in Articles 17 and 23 of the ICCPR. The right to private and family life means that families, communities and children must be protected from the risks that characterize the various phases of a resettlement process including preparation, relocation and recovery. The protection of the family must be guaranteed through a predictable process in which families can anticipate what will happen to them, so that they can make plans to manage and restore their lives including daily activities such as childcare. With regard to relocation, families must give consent to the actual timing of removal. The Basic Principles (United Nations, 2007a, p.12) stipulate that “the right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed”. Furthermore, relocation must not take place in “inclement weather, at night,

during festivals or religious holidays, prior to elections, or during or just prior to school examinations” (United Nations, 2007a, p.11). Thus, the relocation process must protect families from inhumane or degrading treatment and respect their dignity, security and right to life.

UNICEF (2012) has developed a guidance document on *Children’s Rights and Business Principles* to help businesses understand where and how their activities might impact children. Every business activity should respect the right to protection and safety of the child, as articulated in the Convention of the Rights of the Child (CRC). A resettlement process can impact on children’s mental and physical health as well as their ability to go to school (Downing 2002). The right to education is outlined in Article 28 of the CRC (and is also enshrined in Article 13 ICESCR). The right to health is reflected in various articles of the CRC, specifically Article 24. During the actual relocation process, the health and wellbeing of children must be included in monitoring and evaluation activities. While the IFC Guidance Note 5 (IFC, 2012b) does refer to children as a vulnerable group, it does not require project proponents to specifically consider the resettlement risks to which children are exposed.

The resettlement process should respect and fulfil the right to information.

The Basic Principles (United Nations, 2007a, p.9) state that: “All potentially affected groups and persons, including women, indigenous peoples, and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process”. All relevant information must be provided to affected communities prior to undertaking any decisions, and people must have sufficient time to process the information. The information provided must be inclusive and understandable by all groups including the vulnerable. The information should be provided in appropriate languages and in various formats, depending on the local context. Respecting the right to information requires that people are able to access all appropriate documentation and that they have access to independent advice (legal, technical and other) (United Nations, 2007a). It also requires that information is regularly updated and that there be ongoing dialogue.

Project proponents should not underestimate the time and resources needed to ensure that the right to information is fulfilled. When the informing process is rushed, people are not

adequately informed and they do not have sufficient time to process the information (Kemp and Owen, 2013). Therefore, people can become confused and there is greater likelihood of conflict, which would damage the legitimacy of the process. Thus, a lack of information can result in grievances that may be difficult to solve later on. Project operators need to plan how all affected persons are going to be informed about all aspects of the resettlement process and its procedures, including: information regarding their rights and options, as well as about relevant government legislation; the procedures for participation in decision-making; the formulae to determine compensation and/or methods used to value assets; how to gain access to independent advice; the complaints handling process and how they can have access to remedy; and the availability of a special process for vulnerable groups.

The IFC PS5 (IFC, 2012a) states that resettlement should ensure the appropriate disclosure of information to project-affected people. However, “sufficiently early” (IFC, 2012b, p.12) is too vague. In resettlement planning, respecting and realising the right to information is vital and this may be many years in advance of the actual resettlement. For example, in Germany, the planning of the involuntary resettlement necessary for the expansion of the Garzweiler lignite mine (Phase 2) started more than 10 years in advance of the actual relocation (Hinzen, 2012). Allowing enough time is necessary to enable affected families and communities to comprehend the situation and possible impacts, and to raise issues the project operator might have overlooked, as well as to reduce the stress associated with potentially excessive pressure to consent to compensation proposals. The IFC PS5 (2012a) does not adequately emphasise the long timeframe needed for the planning of adequate resettlement.

The resettlement process should respect and fulfil the right of impacted people to participate in decision-making consistent with the principle of equality and non-discrimination, and must provide adequate attention to the needs of vulnerable groups.

In resettlement practice, neglect of the basic human right of access to information and the right to participation occur regularly, hampering successful resettlement outcomes (AfDB, 2015; World Bank, 2016b). Participatory processes must become more strongly emphasised in resettlement practice so that resettlement activities and related programs meet community needs, build public support, and strengthen community cohesiveness. However, the notion of participation is not well understood by project proponents and is poorly implemented.

From a human rights perspective, processes are only truly participatory when they reflect the principle of ‘active, free and meaningful’ participation as established in the *United Nations Declaration on the Right to Development* under Article 2 (United Nations, 1986; UNCHR, 2006). Everyone is entitled to active, free and meaningful participation, and all individuals and groups should be enabled to contribute to their own economic, social, cultural and political development (Stamford Agreement, 2003). The principle of inclusion is central to participation and requires that all people, including women, the elderly, youth, and the disabled, be encouraged to be involved (Stamford Agreement, 2003). Also, the principles of equality and non-discrimination are important, as they involve the consideration of the specific needs of each social group, especially those individuals, families or communities who are vulnerable or marginalised. It should be noted that participation does not necessarily result in or imply consensus, nor does it mean that the community is always ‘right’ and the project is ‘wrong’, or vice versa. An active and free participatory process can reveal opposing positions and opinions of the various groups and individuals in society. Thus, the challenge is how these varying opinions can be considered and integrated into meaningful outcomes for all (Webler et al., 1995; Dare et al., 2014). Companies need to have skilled personnel to be able to do this.

The participation of all groups is required in all phases of the resettlement process, including: around the nature and acceptability of the overarching project; the design and choice of replacement houses; the appropriateness, extent and mechanisms for the payment of compensation; the design and implementation of any livelihood restoration programs; the level and types of social services to be provided; and the extent to which there is an overall fair and transparent process (Stamford Agreement, 2003; United Nations, 2007a). Participatory processes should seek to empower project-affected peoples by providing possibilities for dialogue and learning. They should have the potential to influence decisions and contribute to achieving equitable outcomes. Amongst other benefits, enabling meaningful participation would reduce the uncertainty experienced by the affected people and it shows respect for their human dignity (Frankovits, 2006).

With regard to resettlement risks and impacts, women, men, children, youth and the elderly are likely to have different questions and needs, and these differences must be taken into account (United Nations, 2014b). To respect the principles of inclusion, equality and non-

discrimination, the project operator must conduct a vulnerability assessment before the start of resettlement planning, information sharing and participation activities. The concept of vulnerability should be adapted to cater for each context, but should take into account families with elderly, mentally and physically disabled persons, single-headed households with children, and child-headed households (ICMM 2016). Because there typically are differential experiences of negative and positive social impacts (Vanclay, 2012), the understanding of vulnerability also applies to the extent of the impacts likely to be experienced by each family or household.

Participation that involves Indigenous peoples must take the concept of Free, Prior and Informed Consent (FPIC) into account. The *United Nations Declaration on the Rights of Indigenous Peoples* (United Nations, 2007b), ILO Convention 169 (ILO, 1989), and various other conventions and agreements all require that where Indigenous peoples are present, resettlement can only take place when they have given their free, prior and informed consent (Goodland 2004). Thus, the participation of Indigenous peoples necessitates their ability to discuss, negotiate and freely give or withhold their consent to all or some aspects in a resettlement process. In certain circumstances, Indigenous peoples may have the legal ability to deny approval to the project requiring the resettlement (Hanna and Vanclay, 2013). In situations of unavoidable relocation, the IFC PS7 (p.5) states, “the client will not proceed with the project unless FPIC has been obtained”.

The IFC’s (2012d, p.2) *Access to Information Policy* requires IFC clients “to engage with communities affected by their projects, including through the disclosure of information”. However, in this overarching policy, nothing is specifically stated regarding the need for the participation of project-affected peoples. IFC PS5 (2012a) and the IFC Guidance Note 5 (2012b) emphasise the informed participation of affected peoples in resettlement decision-making. However, no detail is provided on how participatory processes should be conducted. It seems that the IFC has not paid sufficient attention to what would constitute an adequate participatory process. From a human rights perspective, establishing and conducting such a process is paramount. The IFC should ensure that participation is well understood and implemented by project operators in a way that is meaningful to all affected people.

The resettlement process should respect and fulfil the right to remedy through an operational grievance mechanism with an appropriately adapted process for vulnerable groups.

Remedy for adverse impacts is fundamental to the existence of human rights, but there are significant difficulties in effectively identifying and implementing appropriate remedies (Knuckey and Jenkin, 2015; Kemp and Owen, 2017). The right to remedy is established in the ICCPR under Article 2(3). It requires that people be enabled to claim their rights, especially when they experience adverse impacts, and that any adverse impacts must be investigated and subsequently addressed

A grievance can be understood as “a perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities” (United Nations, 2011a, p.27). Grievances often comprise a direct impact on human rights, for example, when financial compensation is delayed and a relocated family has no means to continue undertaking their livelihood or income-earning activities. Ignored grievances can result in protest and conflict, which can be further exacerbated by clashes with police or company security forces, potentially making the project operator complicit in human rights violations (Wright, 2008; Voluntary Principles, 2000). Analyses of the historical pattern of unaddressed grievances of project-affected peoples reveals manifest disregard of their human rights, leading to the strong recommendation that the right to remedy must be better implemented, especially through improving access to information, greater engagement, participation and dialogue (Ruggie, 2013; Doyle, 2015).

The human rights responsibility of business enterprises requires the establishment of effective operational level grievance mechanisms, consistent with the criteria elaborated in the UNGP (United Nations, 2011a). At a project level, such mechanisms are needed not only to identify human rights abuses, but also to investigate and respond to any non-frivolous claims. Such claims can result in adverse human rights impacts, especially when they are not detected or addressed at early stages. Grievance mechanisms must be rights compatible by ensuring that the processes, outcomes and actual remedies respect the human rights principles set out by the HRBA and the various other standards,

A remedy may itself create adverse impacts on human rights, especially if it is not thought through properly. For example, the payment of compensation in cash as a form of remedy for adverse environmental impacts cannot make good the harm when affected people are unable to effectively use the money for restoring their health, livelihoods or cultures (Cernea and Mathur, 2007). Or, the giving of jobs (as a remedy for loss of livelihoods) to certain groups of people could lead to (gender) inequality or conflict in a community, and may well be discriminatory. Thus, the decision on the type of remedy to be provided must be very well considered by the project proponent in order to make sure that the remedy is satisfactory to the affected persons and makes good the harm that was created.

Whereas project operators are required to have a grievance mechanism for the overall project (UNGP, 2011a; see IFC PS1 and PS2), the resettlement subproject(s) must also have specific grievance mechanisms in place to effectively address resettlement and compensation related grievances. Grievances vary, as they may relate to different aspects of the resettlement process, for example the adequacy of the compensation, information access, negotiation process, relocation process, housing provision, health services, or stress management. Ideally, grievances should be avoided whenever possible, although when they arise they form an important source of input for the project operator to continuously learn and improve the resettlement process (IFC, 2009, UNGP, 2011a). Thus, due process in terms of grievance handling is one of the core aspects in resettlement to ensure people's right to remedy as well as their dignity.

The IFC PS5 (IFC, 2012a) and Guidance Note 5 (IFC, 2012b) require that grievance mechanisms be established early in the resettlement process in order to capture and address issues in a timely manner. PS5 also recognizes that an effective grievance mechanism is essential to ensure successful resettlement outcomes, and that they should be adjusted to enable the voices of all groups to be heard. However, PS5 should make reference to the UNGP's criteria for effective grievance mechanisms to better inform project operators about how they should manage and address grievances in order to be human rights compliant.

The whole resettlement process must be governed by transparency and accountability.

As established in the Human Rights Based Approach (HRBA Portal, 2016b), the principle of accountability demands that "States and other duty-bearers are answerable for the observance

of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments”. Governments have a primary obligation to protect citizens from the harm done by others including corporations (United Nations, 2011). However, a governance gap exists, meaning that governments often have conflicting interests and/or are unwilling or unable to hold companies accountable for the human rights violations they may cause or in which they are involved (Ruggie, 2013).

The corporate responsibility to respect human rights (UNGP, 2011) established that companies (i.e. project operators) are responsible for their adverse impacts on human rights, independently from government human rights obligations, and can thus be held accountable when human rights have been breached. In situations of involuntary resettlement, private operators are accountable for resettlement outcomes that result in detriment to any of the human rights. Unfortunately, there exists a lack of ongoing independent monitoring of the processes and outcomes of resettlement (ICMM, 2016; AfDB, 2015; World Bank, 2015). In practice, any monitoring tends to be conducted internally or by consultants paid by the company, and the results are not necessarily made public.

The IFC (2012d, p.1) *Access to Information Policy* states that: “the IFC believes that transparency and accountability are fundamental to fulfilling its development mandate”. However, how project proponents might be held accountable is not explicitly mentioned in PS5. In PS5, it is stated that a monitoring process should be undertaken and that after the resettlement is completed there should be a completion audit at which time resettlement outcomes must be compared against the IFC resettlement objectives and the RAP. IFC PS5 (2012a) states that resettlement can be considered complete only when all the adverse impacts of resettlement have been addressed and the achieved resettlement outcomes are in line with the PS5 objectives. However, the IFC does not firmly establish that project proponents remain accountable until satisfactory outcomes are achieved. In addition, the IFC does not stress the participation of affected people in the monitoring and evaluation of the resettlement process. National human rights institutions (NHRIs) should play an important role in strengthening the monitoring of project-induced resettlement (ICC, 2010). This means that they need to have strong mandates to be able to perform as the national watchdog of involuntary resettlement practices. NHRIs could be an independent party in resettlement by having access to all documentation, conducting resettlement observations, and by making demands for adjustment

to the process where necessary. They should fulfil the role of neutral observers (United Nations, 2007a) so that they can report on any inhumane or degrading treatment, and ensure that the project operator respects people's right to peaceful assembly and protest. In order to fulfil this mandate, NHRIs require adequate training to improve their expertise of resettlement and related human rights issues (United Nations, 2007a; ICC, 2010).

(B) Human rights pertaining to the outcomes of resettlement

Project operators need to consider various human rights to ensure that the outcomes of resettlement are compatible with human rights principles and standards. This means that all relevant human rights must be respected and realised at individual, household and community levels. Below we discuss the expected resettlement outcomes that should result in respecting the full range of human rights, including the rights to food, water, housing, work, health, education, culture, religion, and an adequate standard of living.

Full and fair compensation for individuals, families and communities must be provided in advance of relocation taking place.

Insufficient compensation and/or poor implementation hamper people's ability to restore their livelihoods and get on with their lives (Cernea and Mathur, 2007; Perera, 2014; ICMM, 2016). Typically, national frameworks require that compensation for loss of land and/or physical assets be paid in the form of cash (either paid into bank accounts or directly into the hands of the affected people). There are many problems with payments in cash (Cernea, 2003). Firstly, it is especially problematic when the affected people are not used to dealing with relatively large amounts of money. Secondly, national frameworks frequently do not consider the need for compensation for the loss of many non-tangible assets that form an important part of people's livelihoods (Price, 2008, 2009). Other particularly problematic aspects of the compensation process are the risk of assault, theft, corruption and fraud in relation to the disbursement of payments, as well as substantial delays in the provision of compensation (Perera, 2014; Tagliarino, 2016). Also, the use of generic compensation formulae (flat fees for various items) rather than determining entitlements on an individual or household basis can result in perceptions of unfairness.

Compensation programs that are not adequate in protecting families from impoverishment can adversely impact on the right to an adequate standard of living established in ICESCR Article 11: the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. More specifically, the Basic Principles (United Nations, 2007a, p.13) states that “persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realisation of the right to adequate housing”. Compensation programs should become human rights based, which means that they must fully and fairly compensate for the loss of all assets, livelihoods and opportunities.

The IFC PS5 (2012a) requires compensation for the loss of assets at full replacement cost. Replacement cost includes the market value of the lost asset and the costs involved for the recovery and transport of the affected assets (IFC, 2012a). The Guidance Note 5 (IFC, 2012b) explains that the criteria for replacement cost can involve compensation for agricultural or pasture land, fallow land, land in urban areas, houses and other structures, and loss of access to natural resources. The replacement cost criterion is regarded as an improvement over most national legislation standards, which typically only require compensation at local market value and no compensation for restoring the assets or for transaction cost (Price, 2008; Tagliarino, 2016). It can be difficult to establish the market value of physical assets such as houses and other types of properties. Formal markets can be non-existent or distorted, and the market value defined for a house or a crop may not ensure that the person or family is able to acquire equivalent assets to re-establish their livelihood effectively (Cernea and Mathur, 2007; Tagliarino, 2016).

Even though the specifics of compensation packages may differ across various resettlement situations, the Basic Principles (United Nations, 2007a, p.13) states that compensation should be provided in the form of like-for-like or financial compensation that addresses “any losses of personal, real or other property or goods including rights or interests in property”. The Basic Principles further specify compensation should be provided for any damage taking into account the circumstances of each case, such as: “loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and

social services” (United Nations, 2007a, p.13). To provide compensation in a timely and appropriate manner, a company must be adequately prepared for the required logistics and expertise. The failure to address compensation fully could result in a claim that the resettlement was non-compliant with human rights standards and constituted a forced eviction.

Taking into account the range of compensation issues outlined in the Basic Principles, the IFC PS5 (2012a) compensation objective can be interpreted as being too narrow, as it primarily focuses on assets and income-related losses, rather than lost opportunities, mental harm, inconvenience, loss of cultural assets and sense of place, and the loss of social networks. These losses may be difficult to express in monetary value, however, these are typically very important to people and to the restoration of their livelihoods. These losses could involve adverse impacts on human rights especially the right to health, culture and the right to continuous improvement of living conditions. Thus, as well as consideration for compensation for physical assets, more attention should be given to what might constitute replacement costs for other types of losses. The IFC PS5 (2012a) should provide a comprehensive list of all possible losses to be compensated by project proponents; with particular mention of compensation for mental harm.

Fair compensation requires that the project proponent should develop and implement a transparent and timely compensation process. An important aspect of this is to provide access to the valuation methods used by the company or the government, and to ensure access to free, independent expert assistance and advice. The IFC PS5 and the IFC Guidance Note 5 recognize that transparency in the compensation mechanisms and valuation methods used is important for the overall legitimacy of the process. Furthermore, ‘fair’, as recognized in PS5 (IFC, 2012a), involves ensuring equality and non-discrimination, which means that all affected people are entitled to a form of compensation regardless of the nature of their land title or occupancy arrangements. Article 3 in the ICCPR and ICESCR emphasizes the equal rights of women and men to the enjoyment of their human rights. Therefore, compensation packages must be gender sensitive and respect the rights of women as well as men (United Nations, 2007a). This means that women and men living together in one household must be equal or co-beneficiaries of the compensation package, especially financial compensation, and

single women and/or men as well as widows must be entitled to their compensation in their own right. This human rights aspect is duly recognized in the IFC PS5 (2012a).

Like-for-like compensation is of considerable importance in resettlement, particularly in relation to land-based livelihoods (ICMM, 2016; IFC, 2012a). The human rights that form the basis of such livelihoods, such as the rights to food, water and culture, must be respected. The Basic Principles (United Nations, 2007a, p.13) establish that “cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better”. With regard to housing, the appropriateness of cash compensation or like-for-like must be considered in each context. The expectation that displaced families can construct a new house or commission its construction generates considerable stress and creates a tremendous burden on their daily lives, which can adversely impact on the right to health. Therefore, each family should be enabled to choose between the options of: having a new house constructed for them; being able to move to an existing house of their choice; or building a house for themselves with adequate support from the company.

The IFC PS5 (IFC, 2012a) requires replacement housing that is of improved quality and the Guidance Note 5 (IFC, 2012b) refers to the Basic Principles (United Nations, 2007a) for further details on the adequacy of housing. In the context of resettlement, the right to adequate housing involves criteria to be taken into account by project operators (see Box 3).

Box 3. Criteria relating to the right to adequate housing

(Extracted from United Nations 2009, p.4)

Criteria	Description
Security of tenure	Housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats.
Availability of services, materials, facilities and infrastructure	Housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal.
Affordability	Housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights.
Habitability	Housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards.
Accessibility	Housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account.
Location	Housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if located in polluted or dangerous areas.
Cultural adequacy	Housing is not adequate if it does not respect and take into account the expression of cultural identity.

In practice, the options for replacement housing typically require the selection of resettlement site locations that involve significant trade-offs (Reddy et al., 2015). Families may receive improved housing in terms of material quality and value, and thereby it might be considered that the IFC requirement for an improvement in housing would be fulfilled (ICMM, 2016). However, other characteristics of the new site such as increased distance to major centres may hinder access to work opportunities, places of cultural and religious importance, essential services, and to family and relatives (ICMM, 2016, van der Ploeg et al., 2016). An increased distance to essential services may adversely impact on the right to education and health. Also, reduced access to family and relatives can bring increased risks, especially to vulnerable groups such as the elderly.

Table 3 shows how the right to housing is linked to many other human rights issues that need to be taken into account. The selection of a resettlement site must not involve trade-offs in human rights – each right is equally important and each must be addressed (United Nations, 2011a; Götzmann et al., 2016). A material improvement in housing must not make families worse off in other aspects of their livelihoods or wellbeing in human rights terms. Therefore, “the choice of resettlement site is the single most important criterion in supporting the restoration of the livelihood of the impacted household” (ICMM, 2016, p.33).

Resettlement should result in enhanced livelihoods in order to respect and fulfil the right to an adequate standard of living and other relevant human rights.

The IFC PS5 (2012a) is not explicit on how livelihood improvement should be achieved. In many cases, project operators have not given adequate attention to the outcomes of livelihood restoration programs and the ultimate goal of conceiving resettlement as a sustainable development program has not been achieved (World Bank, 2016b; World Bank, 2015; Perera, 2014; Adam et al., 2015; AfDB, 2015). A major concern is that with the declining availability of land of similar or better quality, the traditional land-based livelihoods of communities cannot be (fully) restored. Often, communities have not received adequate support to adapt their livelihoods to their new environment (Smyth et al., 2015; ICMM, 2016).

There are some problematic aspects in livelihood restoration thinking and practice. Firstly, as mentioned previously, suitable replacement land is often not available or adequate to restore traditional or land-based livelihoods. Access to forests, rivers and seas is often significantly reduced by large projects without operators fully considering options to restore access. Therefore, livelihood restoration programs must become more strongly focussed on *livelihood adjustment*, and there must be long-term support to families and communities in helping them to adapt their livelihood strategies to the new situation. Livelihoods that need to be adjusted to income-producing activities require more thinking about how project-affected people can overcome the problems associated with this disturbance of their livelihoods. They may need to learn new skills for other types of income activities, which must also be culturally appropriate (World Bank, 2016b). Thus, families and communities might need to be assisted to change from land-based to wage-based livelihoods in a relatively short time (Kemp and Owen, 2013). With regard to the social aspects of livelihood restoration, a stronger emphasis is needed on how social networks and social cohesion can be restored (Price, 2009). This

could be through social projects, cultural activities and sports events, which can strengthen relationships within the community and establish relationships with host communities.

Second, livelihood restoration programs tend to be based on the ideas of social development experts without sufficient input from the affected people themselves. As a consequence of this, these programs do not always work in practice, especially in the longer term (ICMM, 2016; Hanna et al., 2016b). From a human rights perspective, livelihood restoration programs must be participatory; ideally designed and implemented by the affected communities themselves, with logistical, material and financial support provided by the project operator. To ensure the success and continuity of these programs, the affected people must be involved in their implementation and ongoing operation. Also, there must be attention given to gaining the support and involvement of the larger community, including host communities. Project operators must realise that restoration programs should not be developed and implemented with a top-down process. They will only generate successful outcomes when based on the ideas and needs of the affected people (Esteves and Vanclay, 2009).

Third, the significant mental stress that tends to be experienced by persons and families throughout the resettlement process (Scudder, 2005) obstructs successful livelihood restoration and improvement. Severe stress and trauma that keeps people from doing their daily activities, such as going to work and taking care of their families, has adverse impacts on the right to health, the right to family life, and potentially the right to life (United Nations, 2014b). Therefore, livelihood restoration programs should help individuals and families improve their feelings of security, reduce stress, and deal with any emotional harm experienced. The programs should continue until such time that all affected people, particularly vulnerable persons, have fully adapted to the new environment. As previously indicated, the IFC PS5 (2012a) does not discuss mental harm as a consequence of involuntary resettlement, and there are no clear requirements for private operators with regard to managing mental harm and the risk of (enduring) trauma.

Fourth, another complex human rights issue is that decades of resettlement practice has shown that the payment of large amounts of financial compensation has led to impoverishment and subsequent adverse impacts on the right to an adequate standard of living, the right to food, and the right to life (Cernea, 1997, 2003; Cernea and Mathur, 2007; Scudder, 2005, 2011).

This has especially affected people who are regarded as vulnerable including the poor and/or illiterate, women and children, and Indigenous peoples (Perera 2014). Poor families in displaced communities are usually ill-prepared to negotiate and manage relatively large amounts of money, especially when it is given cash-in-hand (Terminski, 2015; Penz et al., 2011). Compensation paid solely in cash is a major risk to affected families and individuals, as it is often spent on short-term luxury products such as cars, motorbikes, refrigerators, televisions, or spent on alcohol or other amusements, or is used to pay for lavish weddings or pilgrimages. As a result, families quickly run out of money and, having lost access to their means of subsistence, typically experience a degradation of their livelihoods (Lahiri-Dutt and Ahmad, 2011; Perera, 2014). An important part of livelihood restoration, therefore, is that project operators should establish cash management programs that provide support to families (especially the vulnerable groups) in managing the relatively large amounts of money.

Finally, livelihood restoration should not be articulated as an ‘encouragement’ or ‘aim’, as suggested by the IFC Guidance Note 5 (2012b, p.17), rather adequate livelihood restoration programs should be seen as being essential to respect and fulfil the basic rights of affected families. From a human rights perspective, the objectives of livelihood restoration and improvement address many human rights, all of which must be respected and fulfilled. Thus, livelihood enhancement is an absolute minimum standard that must be complied with.

Resettlement should result in the restoration of access to work and to markets in order to respect the right to work.

Resettlement outcomes must respect the right to work, which is established in Article 6 ICESCR, and can be understood as “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”. An adverse impact on the right to work can occur when access to existing jobs or job opportunities is obstructed. Respect for this right means that people’s access to jobs (for example in the nearby city), shops or other business activities must be restored at the new resettlement site. A significant increase in transport costs can obstruct a person’s ability to go to work, to markets, or to seek job opportunities, which adversely impacts on the right to work. Additionally, a person may lose their job due to stress or to the time needed to reorganize their lives after being resettled, which comprises an adverse impact on the right to work.

The right to work is closely related to the right to food and the right to water. Impacting on the right to work can result in obstructed access to adequate food and water, which subsequently can adversely affect other basic human rights such as the right to health. The right to food is interpreted broadly and can be understood as every man, woman and child, alone or in community with others, having physical and economic access at all times to adequate food or means for its procurement (United Nations and FAO, 2010). Resettlement sites must be carefully selected taking into account the affordability of all families to continue to go to their place of work, to access their lands and to markets, so that their right to food is respected. Waged agricultural workers can be particularly vulnerable, especially when the choice of a resettlement site location means an increase in distance, additional costs and therefore obstructed access to farms that offer job opportunities (Reddy et al., 2015).

Project operators need to take into account the criteria of the right to adequate housing (see Table 3) to make sure that resettlement outcomes respect and fulfil the right to work. Furthermore, more attention must be given to respecting and fulfilling human rights that are essential to human life and dignity, which can be infringed when access to work is obstructed. The IFC Guidance Note 5 (IFC, 2012b) does mention the issue of work in relation to compensation for wage based livelihoods and expresses concern for restoring access to work in resettlement sites. However, the IFC is not stringent in demanding that resettlement sites likely to negatively impact on people's right to work should not be selected.

Resettlement should result in the improvement of access to essential public services to respect and fulfil the right to health, water and education.

Essential public services include education and health facilities, as well as utilities such as water and electricity. Essential public services are deemed necessary for the enhancement of individual and societal wellbeing, and to respect and fulfil human rights (Hesselman et al., 2016). The relevant human rights include the right to the highest attainable standard of health (Article 12 ICESCR), the right to education (Article 13 ICESCR), and the right to water and sanitation (General Comment 15, 2003; United Nations, 2010a).

Project operators often do not adequately consider the need to improve access to essential services, or the challenges associated with doing so (ICMM, 2016; Human Rights Watch, 2007; van der Ploeg et al., 2016). Similar to the issue of access to work, the resettlement site

location is of tremendous importance to ensure that access to essential public services is adequate, and that the corresponding human rights are respected and fulfilled. Where families did not have access to basic household utilities in their original dwellings, enabling access to these services in the new housing is a way to fulfil human rights. When private operators construct new health or school facilities, long-term access to these services should be taken into account, including responsibility for ongoing maintenance (van der Ploeg et al., 2016). The Availability, Accessibility, Acceptability and Quality (AAAQ) framework provides guidance in determining what ‘adequate’ entails to ensure enjoyment of human rights particularly with regard to the right to health, water and sanitation (UNOHCHR, 2000; Jensen et al., 2014). The issue of accessibility is also important in terms of how freedom of movement is ensured in the new site. By taking into account the mobility patterns of the resettled population, project operators need to plan closely with government in providing the necessary public infrastructure, including access roads and public transport facilities, so that communities do not become isolated.

Attention for the health and future prospects of resettled children seems an ignored aspect in resettlement planning. Children are especially vulnerable to diseases when there is a lack of adequate sanitation or potable water in resettlement sites (Unicef and WHO, 2009). Also, children’s rights can be affected when schools are not accessible or affordable due to remote resettlement sites, or because of insufficient places being available at existing schools in the area. The right to education can be respected and fulfilled by making sure that displaced children become enrolled in local schools and that youth have access to higher education and skills training (Robinson, 2003; Unicef, 2012).

Project-affected people should participate in the establishment of the various services as much as possible so that they can contribute to, and feel responsible for, the management of these services, and thereby become less dependent on the project operator and/or the government for their basic needs. The IFC Guidance Note 5 (2012b) addresses the aspect of access to essential public services only by stating that social services should be replaced, but it does not further explicate the risks and challenges relevant from a human rights perspective. In addition to the IFC PS5 objective of ensuring adequate housing, the IFC must explicitly require project proponents to ensure adequate access to essential public services at resettlement sites.

Resettlement should result in continuing access to places of cultural or spiritual significance and the commitment to preserve intangible and tangible cultural heritage to respect the right to culture and the right to religion.

Worldwide, large-scale projects have had detrimental impacts on the ability of affected communities to preserve or safeguard their cultural heritage including cultural practices, specific ways of life, cultural sites and landscapes (Shaheed, 2011). For many affected groups and communities, especially Indigenous peoples, the right to culture (Article 15 ICESCR and Article 27 ICCPR) is interlinked with the right to self-determination, embodying the right to continue practising traditional livelihoods and spiritual practices that are strongly connected to the lands they inhabit and use (Centre for Minority Rights Development, 2003; ACHPR and IWGIA, 2005; United Nations, 2011b).

The high likelihood that agreeing to resettlement will result in irreversible impacts on their traditional lifestyles and will sever a community's relationship with ancestral spirits are major reasons why communities have resisted projects, and why resettlement has resulted in severe grievances, conflict and human rights violations (Centre for Minority Rights Development, 2003; ACHPR and IWGIA, 2005; United Nations, 2011b; Hanna et al., 2016a). By way of example, in a case brought by the Indigenous Endorois people of Kenya, the African Human Rights Commission reconfirmed the principle that access to spiritual sites must be ensured and, as this had not been done in the case of the evicted Endorois people, that their right to culture and self-determination had been violated (Centre for Minority Rights Development, 2003). The IFC has a performance standard specifically addressing impacts on cultural heritage. Performance Standard 8 (IFC, 2012e, p.1) defines cultural heritage as:

(i) tangible forms of cultural heritage, such as tangible moveable or immovable objects, property, sites, structures, or groups of structures, having archaeological (prehistoric), paleontological, historical, cultural, artistic, and religious values; (ii) unique natural features or tangible objects that embody cultural values, such as sacred groves, rocks, lakes, and waterfalls; and (iii) certain instances of intangible forms of culture that are proposed to be used for commercial purposes, such as cultural knowledge, innovations, and practices of communities embodying traditional lifestyles.

PS8 requires that cultural heritage in all its forms be protected from project impacts, that its preservation be supported, and that there be equitable sharing of benefits from the use of cultural heritage. Cultural and religious practices form an important part of people's

livelihoods and thus can comprise significant losses when they are interfered with. PS5 (2012a), however, does not elaborate on how cultural losses could or should be addressed at resettlement sites. In a situation of resettlement, respect for cultural and religious rights means that communities should have the freedom to choose to continue with their traditional lifestyles and practices, and that their access to important places, buildings, natural features (such as rocks, lakes, waterfalls) must be restored. While trees and graves can sometimes be relocated, it might not be feasible to remove buildings with cultural or religious importance, and they might need to be demolished. Primary data collection should include the identification all the places and buildings of cultural and religious significance. Subsequently, a participatory process should involve discussion with the affected community about how their heritage can be best preserved, relocated and/or (re)built.

Conclusion

We have articulated the basis of a Human Rights Based Approach to Resettlement (HRBAR). We identified the specific human rights and human rights principles that should be implemented throughout resettlement planning processes and realised in the outcomes of resettlement actions. The HRBAR assists in the implementation of the corporate responsibility to respect human rights in the context of project induced displacement and resettlement. The HRBAR shows how human rights can be respected through human rights based resettlement procedures and outcomes. While the IFC Performance Standards provides best practice that is likely to lead to reasonable outcomes, they do not sufficiently emphasise the human rights dimensions of resettlement practice.

Project proponents should use the HRBAR in conjunction with best practice standards (such as the IFC performance standards) to ensure that human rights responsibilities are exercised in the design and implementation of resettlement action plans and livelihood restoration programs. In addition, stakeholders and rights-holders such as communities and civil society organisations can use the HRBAR to demand alignment of the plans and procedures developed by the government and/or proponent with international human rights standards. Stakeholders can also use the HRBAR to evaluate compliance of resettlement that has taken

place with international human rights standards. This will provide evidence to assist them in demanding remedies when human rights have been violated. Resettlement that is aligned with the HRBAR will contribute to the progressive realisation of economic, social and cultural rights. Project proponents are expected to make positive contributions to sustainable development in the local communities in which they operate, in other words, they are expected to do more than only impact avoidance and mitigation. The realisation of human rights in resettlement processes and outcomes can be achieved through the combined efforts and collaboration between communities, proponents, governments, and civil society organisations.

The full realisation of human rights in resettlement outcomes requires starting from the very beginning with a process based on human rights principles. Such a process needs to: be concerned with the dignity and rights of affected people; demonstrate fairness, transparency and accountability; facilitate the meaningful participation of all people and have appropriate mechanisms to enable vulnerable groups to participate; allow people to negotiate and receive adequate compensation packages that protect them from short and long-term loss of or detriment to their income, personal or community assets, culture, heritage, essential services, and social relationships. Livelihood restoration programs should provide possibilities to support individuals, families and communities to adjust and improve their livelihoods after relocation.

The whole process needs to be underpinned by a commitment to responding to community concerns, including through effective participation methods, inclusion of women and vulnerable people, and grievance mechanisms. Due to the limited availability of replacement land, in situations when subsistence activities need to be adjusted to cope with new environments, affected people must become much more empowered in decision-making, so that livelihood programs designed to assist them can become better suited to their needs. Without such an approach, the hardships created by involuntary resettlement in the past will continue, along with the conflict and human rights violations that have been witnessed. With the growing international interest in human rights, there will be much greater scrutiny of project proponents, and much greater efforts will be taken to hold them responsible for their part in any violations.

Drawing on our comparison between the HRBAR and the IFC Performance Standards, we propose the following modifications (in italics) to the IFC resettlement objectives so that they become more compliant with human rights:

- To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs *with the meaningful participation of affected communities.*
- To avoid forced eviction *in all circumstances.*
- To avoid, and when avoidance is not possible, minimize the adverse social, *environmental, economic and human rights impacts* from land acquisition or restrictions on land use by: (1) *obtaining the free, prior and informed consent of project affected peoples*; (2) *providing full and fair compensation for loss of livelihoods*; (3) *restoring and improving access to essential public services at resettlement sites*; (4) ensuring that the resettlement process is implemented based on the principles of *full access* to information, *the meaningful participation* of those people affected, *the right to remedy and the protection of the family, community and child*; (4) *ensuring that the resettlement process and activities are adapted to vulnerable groups, and*; (5) *establishing an accountability mechanism for ensuring successful resettlement outcomes.*
- To improve the livelihoods and standards of living of displaced persons *by respecting the human rights enshrined in the International Bill of Human Rights and other relevant human rights standards, and to contribute to the further realization of human rights of both economically and physically displaced.*
- To improve living conditions among physically displaced persons through *fulfilling the right* to adequate housing and security of tenure, *and to respect all other related human rights.*

The IFC standards on land acquisition and involuntary resettlement seem reasonably aligned with human rights expectations. But instead of being (optional) best practice, a human rights lens regards them as a basic minimum requirement. Non-compliance with the IFC PS5 would potentially lead to human rights violations and expose the company to business risk. We firmly believe that the implementation of a human rights based approach to resettlement is essential to avoid this risk. We also contend that a human rights based approach to resettlement could lead to better outcomes to projects and is completely consistent with a shared value approach of business and their expected contribution to sustainable development.

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Chapter5

*A tool for improving the management of social and
human rights risks at project sites:
the Human Rights Sphere*



Photo 5. Open-pit coal mine, Tete, Mozambique, 2013

A tool for improving the management of social and human rights risks at project sites: the Human Rights Sphere

Abstract

This paper identifies and addresses the challenges of implementing the corporate responsibility to respect human rights in practice at project sites. To support on-ground operational staff, we offer the Human Rights Sphere (HRS), a practical tool we developed from empirical research in three large-scale projects and from an analytical literature review. The tool is consistent with the United Nations Guiding Principles on Business and Human Rights (UNGPs). The HRS comprises seven steps through which the understanding and addressing of the social and human rights impacts of projects and corporate human rights due diligence procedures can be enhanced. The HRS describes the various groups of rights-holders to be considered, the social and environmental impacts they may experience, and how these impacts can be linked to actual or potential human rights impacts. The HRS shows how corporate mitigation and compensation practices have to be improved to prevent human rights harm to workers and communities. The HRS presents a comprehensive picture of the human rights side of projects and is presented as a practical tool that can be utilized by operational staff at all project phases. By utilising the HRS, multinational corporations will be better equipped to address the adverse human rights impacts of large projects.

Keywords: social impacts; social risks; social impact assessment; human rights based approach; social licence to operate; corporate social responsibility.

Introduction

Around the world over past decades, large projects have inadequately considered the social impacts experienced by local communities, and mitigation measures have failed to restore their livelihoods and have contributed to their further impoverishment (Cernea and McDowell, 2000; World Commission on Dams, 2000; Oliver-Smith, 2009). In addition, projects have caused environmental harm, which has been detrimental to the cultures, health and livelihoods of local communities (Alstine and Afionis, 2013; Banks et al., 2013; Pegg and Zabbey, 2013), especially Indigenous peoples (de Schutter, 2009; Knox, 2012; Anaya, 2011; Hanna and Vancley, 2013; Hanna et al., 2014, 2016a). Project sites and supply chains were characterized by adverse impacts on the mental and physical wellbeing of workers and their families because of unsafe working conditions, the use of child and forced labour, discrimination, and other illegal and/or harmful actions (Barrientos and Smith, 2007; Seidman, 2007; Wright, 2008; Labowitz and Baumann-Pauly, 2014; Siddiqui and Uddin, 2016; see also businessandhumanrights.org). Analyses of the atrocities committed by governments or by public or private security forces have revealed the complicity of companies in these human rights violations (Bismuth, 2009; Maogoto and Sheehy, 2009; Ruggie, 2008b; Wright, 2008).

The emblematic cases of corporate involvement in human rights abuses, the international and legal standing of human rights, and the fact that powerful multinational enterprises are involved in these abuses but are not regulated at an international level, have highlighted the need to clarify corporate human rights responsibilities (Ruggie, 2008a). As the United Nations Special Representative on business and human rights from 2005 to 2011, John Ruggie's mandate was to develop a global governance framework explicating the human rights obligations of governments in relation to business and the specific human rights responsibilities of companies. Ruggie (2008a) explained the occurrence of corporate related human rights abuse as arising from a 'governance gap'. This refers to the fact that many governments are unwilling or unable to hold businesses, which are operating in their countries or abroad, to account for their adverse impacts on the local environment or people.

In 2008, Ruggie presented the 'Protect, Respect, and Remedy Framework', which consisted of three principles: the State duty to protect against human rights abuses by third parties,

including business; the corporate responsibility to respect human rights; and the need for more effective access to remedy for victims of business-related abuse (Ruggie, 2008a). Simply put, the Framework prescribed that “states must protect; companies must respect; and those who are harmed must have redress” (Ruggie, 2013, p. xxi). In 2011, the Framework was operationalized in the *United Nations Guiding Principles on Business and Human Rights* (UNGPR), which was endorsed by the Human Rights Council (UN, 2011), and is regarded as the leading global standard prescribing corporate responsibilities with regard to human rights.

The endorsement and publication of the UNGPR has activated much high-level policy debate amongst government, academic, NGO and corporate actors interested in human rights (O’Brien and Dhanarajan, 2016). Multinational enterprises across a wide range of sectors have developed their human rights policies and made public statements of commitment to respect human rights (World Economic Forum, 2013). Global business associations have adopted the UNGPR and have established guidelines for their members, notably the International Council on Mining and Metals (ICMM, 2012) and IPIECA (the global oil and gas industry association for environmental and social issues) (IPIECA, 2012, 2014; DIHR and IPIECA, 2013). Some companies have established internal functions of human rights advisors or managers (Shift, 2012). However, the implementation of the corporate responsibility to respect human rights at the local level of project sites remains limited and the effective protection of communities and workers is still hampered (Deonandan and Morgan, 2016; Haines, 2016). Elaborations on a Treaty on business and human rights have continued, which may eventually result in the establishment of an international legally binding instrument to regulate business enterprises with regard to human rights (UNCHR, 2014; Bilchitz, 2014; de Schutter, 2016).

To effectively implement respect for human rights throughout the business, project operational staff need to become trained in understanding the human rights implications of project activities and in what they can do to address these issues in relation to their assigned work and responsibilities (Boele and Crispin, 2013; Posner, 2016). To support operational staff in comprehending the human rights impacts of large projects, we provide the ‘Human Rights Sphere’ (HRS), a tool to facilitate the implementation of the corporate responsibility to respect human rights. Projects here refers to dams, mines, oil and gas drilling, factories, ports, airports, pipelines, electricity transmission corridors, roads, railway lines and other

infrastructure including large-scale agriculture, forestry and aquaculture projects (Vanclay et al., 2015). According to the UNGP (UN, 2011), project-affected communities and workers can no longer merely be perceived as stakeholders, but must be considered as rights-holders with legitimate interests and rights that need to be respected (see also Kemp and Vanclay, 2013). The HRS shows how human rights impacts and risks are related to various groups of rights-holders in the operational context of projects. Human rights impacts and corresponding corporate responsibility can be understood in relation to the environmental and social changes and impacts experienced by various groups of rights-holders (Kemp and Vanclay, 2013; Vanclay, 2002; Vanclay et al., 2015).

The application of the HRS will increase human rights awareness in companies, and will lead to improvements in the design and practice of impact assessment, mitigation, compensation, livelihood restoration, and impacts and benefits agreements, resulting in improved human rights awareness in companies that can positively affect workers, communities, and thus society as a whole. The HRS shows how companies and their projects can contribute to sustainable, local and inclusive development. It illustrates human rights concepts providing important insights and a vision to improve corporate practice at the local level of project sites. The HRS elucidates what a human rights based business approach could look like and how it can be implemented.

What is the corporate responsibility to respect human rights?

The corporate responsibility to respect human rights requires that all business enterprises should “avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved” (UN, 2011, p. 13). ‘All business enterprises’ means all sizes and types of companies, regardless of ownership (UN, 2011). Below we elaborate on the current understanding of human rights and human rights principles, the meaning of adverse human rights impacts, and what the responsibility to respect entails.

Human rights are commonly understood as being those “inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being” (Sepuldeva et al., 2004, p. 3). Human rights are widely accepted as being generally-agreed values, and exist to ensure human dignity and the fulfilment of basic needs of all human beings around

the world. Human rights are universal (apply to all people everywhere), inalienable (cannot be lost, surrendered or transferred), indivisible (all rights are regarded as equally important), and interdependent and interrelated (they influence each other) (HRBA Portal, 2016). The contemporary understanding of human rights became established in the Universal Declaration of Human Rights (UDHR), which was adopted in 1948 in response to the atrocities of the Second World War (UN General Assembly, 1948). In addition to the UDHR, there are two other key human rights agreements: the International Covenant on Civil and Political Rights (ICCPR) (UN General Assembly, 1966a); and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (UN General Assembly, 1966b). Most (but not all) states have ratified these two Covenants. Together, the three documents are known as the International Bill of Human Rights (UN, 1996).

The understanding of human rights has been clarified by the set of principles established in the human rights based approach (HRBA) (Stamford Agreement, 2003; HRBA Portal, 2016), a framework intended to assist all actors – including UN agencies, governments, NGOs, and international financial institutions – in realising human rights in development projects and programs (World Bank, 2013). The HRBA (Stamford Agreement, 2003) describes the following human rights principles: equality and non-discrimination; participation and inclusion; and accountability and the rule of law (Stamford Agreement, 2003).

Governments have the primary obligation to respect, protect and fulfil human rights, and to safeguard a life of dignity for all people without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (UN General Assembly, 1948). In signing up to the ICESCR, governments commit to undertaking steps to progressively realize the economic, social and cultural rights outlined therein. The United Nations accepts that the fulfilment of these rights can be hampered by a lack of resources, and therefore that these rights can only be achieved over time (OHCHR, 2015). However, to ensure a life of dignity, governments must, with immediate effect, meet the minimum essential levels for each of these rights (UNHCR, 2008). Thus, a human rights perspective represents ideals for the continuous improvement of the living conditions of all, as well as a requirement for immediate action when basic standards of living are threatened or not present.

Large projects can have immediate adverse impacts on the enjoyment of various human rights, due to their land acquisition requirements, proximity of the project to locally important natural resources, cultural or religious sites, health and safety conditions in the workplace including in the supply chain, or in relation to security and protection of property (Wright, 2008). Due to policies of liberalization, deregulation and privatization, large projects are increasingly developed and operated by foreign private enterprises or through corporate alliances of national and multinational enterprises (Wettstein 2012). Furthermore, the role of the government as the sole actor in relation to human rights has diminished as responsibility for addressing project risks and adverse impacts including human rights concerns are shared with private operators (Ruggie, 2013). Table 1 presents a list of the human rights that have been adversely impacted by companies (Wright, 2008).

Table 1. Labour and human rights potentially impacted by companies

Source: Wright (2008, slightly modified)

Labour Rights	Human Rights
Freedom of association	Right to life, liberty and security of the person
Right to organize and participate in collective bargaining	Freedom from torture or cruel, inhuman, or degrading treatment
Right to nondiscrimination	Equal recognition and protection under the law
Abolition of slavery and forced labour	Right to a fair trial
Abolition of child labour	Right to self-determination
Right to work	Freedom of movement
Right to equal pay for equal work	Right of peaceful assembly
Right to equality at work	Right to marry and form a family
Right to just and favourable remuneration	Freedom of thought, conscience and religion
Right to a safe work environment	Right to hold opinions, freedom of information and expression
Right to rest and leisure	Right to political life
Right to family life	Minority rights to culture, religious practice, and language
	Right to privacy
	Right to social security
	Right to an adequate standard of living (including food, clothing and housing)
	Right to physical and mental health; access to medical services
	Right to education
	Right to participate in cultural life, the benefits of scientific progress, and protection of authorial interests

Adverse impacts on human rights are understood as impacts that occur when an action (i.e. corporate activity) removes or reduces the ability of an individual to enjoy his or her human rights (UN, 2012). An adverse impact occurs when *access* to the object of the right is obstructed or taken away by a business activity. Construction activities or land takings can block access to spiritual sites, which comprises an adverse impact on the right to culture or the right to religion (Centre for Minority Rights Development, 2003). Also, damage to, or destruction of, natural and physical assets can involve an adverse human rights impact. For example, without the appropriate mitigation measures, a polluted river can result in a community experiencing an adverse impact on their right to health. The destruction of a local school to make space for a project can cause an adverse impact on the right to education if new facilities are not provided immediately. In these examples, access to the object of the right (e.g. the spiritual site, the river, the school) is obstructed and thus, to avoid adverse human rights impacts, access must be restored and in some situations improved.

Each adverse human rights impact is equally important and all impacts must be addressed, but human rights impacts can vary in severity in terms of their scale, scope, and the extent of remediation (remediability) that is possible (UN, 2011; Shift, 2014). Human rights impacts can occur in relation to a community, a particular group or minority, and/or at an individual level. Companies can cause ‘actual’ and ‘potential’ impacts on human rights. An actual impact is an impact that has occurred or is occurring; and a potential impact is an impact that may occur in the future but has not yet occurred (UN, 2012). In other words, potential human rights impacts can be understood as human rights risks. Actual and potential human rights impacts can occur within and beyond the physical boundaries of a project; they can occur in the workplace, in neighbouring communities, and/or in supply chains. An adverse human rights impact is especially severe when there is no appropriate practical solution, for example when project activities have caused substantial mental and/or physical harm or, in the worst case scenario, the loss of life (Shift, 2014; Götzmann et al., 2016). The corporate responsibility to respect human rights fundamentally requires that a business enterprise must find ways to ensure similar or improved *access* to the objects of all rights to avoid adverse human rights impacts. This would reduce the potential likelihood of local conflict and potential complicity in (further) human rights violations.

The corporate responsibility to respect human rights requires companies to respect, at a minimum, the rights in the International Bill of Human Rights and the ILO Declaration on

Fundamental Principles and Rights at Work (UN, 2011). The ILO Declaration on Fundamental Principles and Rights at Work (1998) comprises four core principles: (1) freedom of association and the right to collective bargaining; (2) elimination of all forms of forced or compulsory labour; (3) abolition of child labour; and (4) elimination of discrimination in respect of employment and occupation. Companies are also required to consider any additional standards that may be appropriate in particular circumstances (UN, 2011). Examples of such additional standards include the Convention of the Rights of the Child (CRC) (UN, 1989), for example when the project has potential human rights impacts in relation to child labour and resettlement of families. For projects near or in the territories of Indigenous peoples, the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) (UN, 2007) must be considered. In all circumstances where projects cause displacement and involuntary resettlement, companies must avoid (involvement in) forced evictions, which constitutes a gross violation of human rights (UN, 2014a). In effect, they need to consider all the human rights standards described under a Human Rights Based Approach to Resettlement (HRBAR) (van der Ploeg and Vanclay, 2017).

The corporate responsibility to respect human rights requires that companies establish a policy commitment to respect human rights, and companies need to conduct human rights due diligence on an on-going basis (UN, 2011). This human rights policy should stipulate the expectations of a company towards its personnel and business partners. The policy has to be clearly communicated to all relevant parties including company rights-holders and stakeholders. Second, companies are required to conduct human rights due diligence processes to become aware of, prevent and address adverse human rights impacts on people. The process of human rights due diligence is described as “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed” (UN, 2011, p. 17). Similar to financial due diligence in which a company identifies and manages business risks to its shareholders, a company is required to identify and manage human rights risks to its rights-holders and stakeholders. Human rights due diligence is based on the understanding that respect for human rights is a precondition of doing business and not simply a way to consider risks and opportunities to companies. Thus, the intention of due diligence is that companies not only identify and manage financial risks and aim to comply with national laws, but also to adhere to international human rights law and its prescribed standards (Ruggie, 2008b).

‘Respect’ means that companies should not interfere with the enjoyment of the human rights of communities and workers – they should do ‘no harm’ (Ruggie, 2008a). The UNGP (UN, 2011) requires companies to ‘know and show’ how they manage human rights issues. The first step in human rights due diligence is to undertake an impact assessment to identify and prioritise the human rights impacts that need to be addressed. A company has to consider how the project could interact with each and every human right (Ruggie, 2007). Then appropriate responses should be identified and the relevant department within the company must implement the necessary actions. Subsequently, companies need to track their responses in conjunction with the rights-holders and report on the findings. The findings should become integrated into relevant corporate reporting processes. The whole process has to be supported by ensuring access to remedy. Through the establishment of operational grievance mechanisms, the opinions and experiences from affected rights-holders can be addressed on an ongoing basis (UN, 2011).

The responsibility to respect implies compliance with the requirements of national law, but also requires that international human rights standards be observed. The scope of human rights due diligence is not determined by influence or proximity, as is commonly the case in corporate social responsibility considerations (Ruggie, 2008b). A company is expected to undertake due diligence taking into account all actual and potential impacts caused by their own activities, and all the actual and potential impacts caused by the activities of their business relationships. The UNGP describes ‘activities’ to be understood as both actions and omissions, and ‘business relationships’ as relationships with “business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services” (UN, 2011, p. 15). Companies need to understand how their activities might cause human rights harm, within and beyond the physical boundaries of a project area including along the supply chain. To better understand the scope of a project’s human rights impacts, the company should map out all its business activities and relationships (including suppliers, retailers, distributors) and determine which business relationships pose the most severe risks, and therefore need to be addressed first (Shift, 2014). Companies are expected to use their leverage over other actors to enhance respect for human rights. Leverage refers to the ability of a business enterprise to effect change in the wrongful practices of other parties including amongst its business relationships (UN, 2012). A company is complicit when it

knowingly contributes to another party's abuse of human rights (including, for example, by the government) (Bismuth, 2009; Maogoto and Sheehy, 2009; Ruggie, 2008b).

Whereas the UNGP (UN, 2011) provides general guidelines for how companies of all sizes and from all sectors should approach their responsibility to respect for human rights, we offer the Human Rights Sphere (HRS) to elucidate the subject of human rights in the context of project sites. In order to effectively avoid and address human rights impacts, operational staff need to: comprehend why and how human rights are related to the environmental and social changes and impacts created by the project site and its supply chain; know the individuals, communities and vulnerable groups experiencing adverse impacts; and consider the appropriateness or otherwise of existing corporate practice. Thus, companies need to learn how to apply a 'human rights lens' to their project activities and supply chains – a way of looking at the project's social and environmental risks and impacts, experiences and situations of workers and local communities with a human rights perspective (Shift, 2014). The HRS provides a tool by which operational staff can understand how environmental, social and human rights impacts are inter-related and affect various groups of rights-holders, and how these impacts should be addressed effectively to prevent human rights abuses.

The development of the Human Rights Sphere

The HRS tool was developed by using a multi-methods approach, including document analysis, fieldwork as an intern in three large projects, and participation in conferences and seminars in the business and human rights and social impact assessment communities of scholars and practitioners. The document analysis contained a comprehensive review of the key business and human rights literature, guidance documents, as well as the pre-existing tools used in the field of human rights impact assessment and human rights due diligence. The primary tools and documents examined included: the Aim for Human Rights (2009) Guide to Corporate Human Rights Impact Assessment Tools; Oxfam's Community based HRIA (Oxfam, 2010; Watson et al., 2013); the United Nations Global Compact's How to do Business with Respect for Human Rights (UNGC, 2010a) and Guide to Human Rights Impact Assessment and Management (UNGC, 2010b); ICMM's Integrating Human Rights Due Diligence into Corporate Risk Management Processes (ICMM, 2012); NomoGaia's Human rights Impact Assessment Toolkit (NomoGaia, 2012); BSR's Conducting an Effective Human

Rights Impact Assessment (BSR, 2013); IPIECA's Integrating Human Rights in Environmental, Social and Health Impact Assessments (DIHR and IPIECA, 2013); and the Arc of Human Rights Priorities of the Danish Institute of Human Rights (DIHR, website, 2016).

A total of 10 months of fieldwork was undertaken in association with three large projects in Mozambique (a mine in 2013, a railway line and a port in 2015). During the two periods of fieldwork, the lead author undertook participant observation of community engagement activities in relation to displacement and resettlement, and of awareness raising activities regarding health, safety, environment, security and human rights. The fieldwork was undertaken in cooperation with two multinational enterprises and included conducting a total of 37 in-depth interviews with key company personnel and external stakeholders, in which the challenges to implement respect for human rights in practice were discussed. Finally, the authors each participated in a variety of business and human rights workshops and conferences around the world and/or analysed the reports associated with those events (including ICMM, 2013, 2014; Shift 2012a, 2012b, 2014, 2015). The HRS tool has been presented at various conferences and seminars, and has been adapted in response to the feedback received. Several professionals from various target audiences have read and commented on earlier drafts of this paper, contributing to the iterative development of the tool.

The Human Rights Sphere as a way to implement the corporate responsibility to respect human rights at project sites

Since the release of the UNGP, there has been an explosion of tools and guidelines demonstrating various views on how the corporate responsibility to respect human rights and specifically how the requirement of human rights due diligence could be implemented. Most tools are lengthy documents describing one or more of the following: how to integrate human rights into corporate management; how to integrate human rights into Environmental and Social Impact Assessment (ESIA); or to conduct community-based human rights impact assessment and stand-alone HR assessments. These tools tend to be applied only by external parties (e.g. consultants, NGOs) and are thus somewhat detached from company operations and local staff. Furthermore, when external parties deploy these tools, it detracts from the

necessity of embedding human rights expertise on the ground by improving the knowledge of operational staff at the coalface. Only when company personnel become well trained in engaging with a project's rights-holders and are properly-equipped to recognize, address and manage human rights risks and impacts will corporate human rights due diligence become embedded in the company's DNA (Shift, 2012).

The HRS is a process model comprising seven steps that collectively show how to identify and address the human rights impacts of projects. These seven steps can be depicted graphically (see Figure 1). The HRS can be utilised by operational staff and internal human rights advisors to embed human rights in any type of large project, but it can also be used by stakeholders and rights-holders to become aware of what they can expect from companies.

Step 1: identify and engage with the rights-holders;

Step 2: together with the rights-holders, investigate the social and environmental issues associated with the company's activities and planned actions, and establish the impacts;

Step 3: assign each identified impact to its relevant human rights;

Step 4: establish the justification for action (i.e. the business case, in order to get adequate resources);

Step 5: determine the appropriate department(s) in the company to address each impact;

Step 6: decide on the type of response and how it will be implemented; and

Step 7: track how the response is received by all rights-holders and ask for and act on feedback.

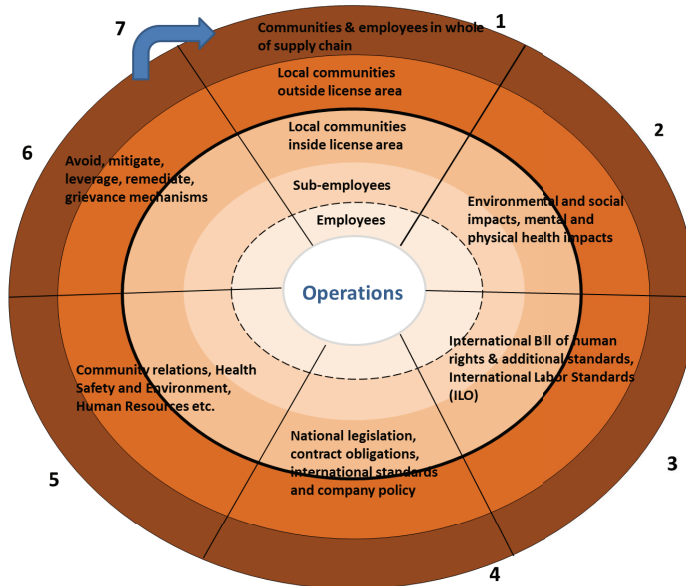


Figure 1. The Human Rights Sphere of project sites

The centre of the HRS comprises the operational activities of the project under consideration. In corporate jargon, the project’s impacts are usually described as being ‘inside or outside the fence’, i.e. the physical fence demarcating the licence area. The solid black concentric circle in the middle distance of Figure 1 represents this concept. From ‘Operations’ to the solid black concentric circle represents the land required for the project in which construction and operational activities (will) take place (e.g. the licence area). The analysis of a project’s HRS should be applied to each distinct operational site. For example, a mining project typically involves the site where the mining takes place; a housing complex for workers; project activities such as the transport of ore over long distances to a port or processing facility; the activities at the port; and other operations.

The multiple rings indicate the various groups of rights-holders who can experience impacts in relation to the project site and its operational activities: inside the fence, outside the fence, and further down the supply chain. Companies are expected to go beyond the simplistic

notion of proximity, the use of which leads them to believe they only have a limited responsibility for adverse impacts occurring beyond the project site, such as in relation to their business partners. From a human rights perspective, companies need to recognize their responsibility for human rights impacts in relation to their web of activities and relationships inside and outside the licence area, thus responsibility for human rights impacts is not limited by geographical proximity (Ruggie, 2008b).

The rights-holders are those individuals and groups whose rights are potentially and/or actually impacted by the project's activities and by the activities of the company's business partners. The HRS presents five groups of rights-holders, all of whom should be equally considered by companies including: (1) employees directly employed by the company; (2) 'sub-employees', i.e. workers employed by contractors and subcontractors of the company (for example cleaners, caterers, truck drivers); (3) communities inside and (4) outside the licence area; and (5) communities and workers throughout the supply chain and along transport routes that are not considered to be separate project sites in their own right.

The dotted line between sub-employees and employees indicates that these groups need to be considered separately because, even though companies might claim that the same standards apply to all employees 'inside the fence', in practice there can be substantial differences (Barrientos and Smith, 2007). The arrow in the HRS indicates that the process of identifying and addressing human rights impacts is ongoing and should be a process of learning, and of continuous improvement and innovation. Also, since operations can expand and business activities and relations can change, groups of rights-holders and impacts are subject to change and therefore have to be regularly re-assessed. Consequently, a company needs to be in continuous dialogue with its rights-holders.

Step 1: Identify and engage with the rights-holders

In the process of identifying and acting on the human rights impacts of a project, companies should start by assessing impacts and risks from the perspectives of the rights-holders. The HRS shows that project rights-holders need to be identified within and beyond the area required for land acquisition. To obtain a complete depiction of the rights-holders related to a project, companies should take into account the perspectives of employees, sub-employees

and subgroups within affected and neighbouring communities including women, men, village elders, and the youth. A company must specifically identify vulnerable groups such as minorities, historically-marginalized and Indigenous peoples.

The principle of Free Prior and Informed Consent (FPIC) safeguards the right of Indigenous communities to withhold their consent to proposed projects that will affect the land they customarily own and/or use (ILO, 1989; UN, 2007; Hanna and Vanclay 2013). These groups must be engaged by project staff in a culturally-sensitive manner and with due consideration to their specific rights and interests (Doyle, 2015; Rodhouse and Vanclay, 2016). Furthermore, vulnerability needs to be identified at multiple levels. For example, at the household level, it relates to widows, single or child headed households, the elderly, and to people with disabilities (Adam et al., 2015). An important vulnerable group that is often overlooked in assessments is children. Because children are in an important part of their life, developing their emotional and physical health and wellbeing, they can be especially vulnerable to the negative impacts of a project (Unicef, 2012).

With regard to labour and human rights issues, the process of engagement should include all employees and sub-employees working within the licence area and those related to the project's activities and those of business relationships outside the licence area. The assessment should include the perceptions of a wide variety of employees and sub-employees, including for example migrant and seasonal workers, locally-hired workers, and expats. Migrant workers can typically be a vulnerable group because of their marginalized position in many societies in which they (temporarily) work (de Schutter, 2009). It is also important to consider separately the voices of women, men, youth, and, in situations of identified or suspected child labour, children working in relation to the project and its supply chain.

It can be a challenge to identify who are (potentially) affected by a project and its activities and to include all groups, including the vulnerable, in engagement and participation activities. It is important that companies move away from discussions and bargaining solely with local chiefs or 'key informants' towards designing and implementing an inclusive participatory approach that is 'active, free and meaningful' (see UN Declaration on the Right to Development, 1986). In each project context, the human rights principles of equality, non-discrimination, participation and inclusion (Stamford Agreement, 2003) should become

applied to community engagement activities as much as possible. Communities and workers have a right to participate in the decision-making processes that affect their lives and wellbeing (Stamford Agreement, 2003). The notion of participation implies that all groups of rights-holders are included as active participants in shaping the processes and outcomes of project design and implementation, and in contributing to local development goals (Stamford Agreement, 2003; Götzmann, 2014). Meaningful participation means that all rights-holders have been adequately informed and have had genuine ownership and control over the changes and decision making processes affecting their lives. They should be involved in influencing all phases of the project cycle, including assessment, analysis, planning, implementation, monitoring and evaluation (Stamford Agreement, 2003). With the principle of FPIC established in the UNDRIP (UN, 2007), Indigenous peoples have a legitimate ability to say no to projects (Hanna and Vanclay, 2013). Thus, participation goes well beyond the statutory consultations typically undertaken as a regulatory requirement in the preliminary phases of projects (HRBA Portal, 2016; Hanna et al., 2014).

The right to participate in decision-making is closely aligned with the right to information (Stamford Agreement, 2003; Frankovits, 2006). How full access to information can be realised must be considered in each context and for each group of rights-holders. Illiteracy, mental or physical deficiencies, religion, local cultures and beliefs, and local languages should all be taken into account to adjust the way information is provided so that all people can become adequately informed. The establishment of permanent, physical places (e.g. listening rooms) where communities and workers can go to discuss their concerns and where they will always be welcome can be a useful way to establish and maintain dialogue between rights-holders and the company. Through such channels, various types of information can be shared. Because of frequent changes in many project plans, having a place where the most current information on the project is continuously updated is very important.

An important aspect of realising participation and inclusion of rights-holders is the establishment of a functional operational grievance mechanism at the start of a project to enable communities and workers to express their views and concerns with regard to the project or in relation to the activities of contractors and other business relationships (UN, 2011). Awareness of the local cultural context is essential when selecting the appropriate type of grievance mechanism (). Engaging with communities and workers can provide useful

insights into what grievance mechanism can be most effective to them and thus to the company (UN, 2011). A grievance mechanism that meets the expectations of the UNGP needs to be legitimate, accessible, predictable, equitable, rights-compatible, and transparent (UN, 2011; see also ICM, 2013, 2014). This is important because companies that do not have effective mechanisms for responding to grievances are more likely to leave them unaddressed, which fuels discontent towards the company, and can result in subsequent impacts and conflicts that are difficult to remediate at a later stage (Knuckey and Jenkin, 2015). Thus, having an effective non-judicial grievance mechanism is of considerable importance to a company in terms of being able to troubleshoot problems early, avoid major crises and reputational harm, and to earn and maintain a social licence to operate (Vanclay et al., 2015).

Companies should establish a grievance mechanism for labour issues for workers inside the fence and in the supply chain, as well as a grievance mechanism for community issues. When a project results in community displacement and/or involuntary resettlement, a specific grievance mechanism for displaced families and communities is required to capture their questions, concerns and grievances, which need to be received and handled in a timely manner. Company staff need to document all the grievances, suggestions and questions they receive so that appropriate responses to the various types of grievances can be determined. Operational grievance mechanisms also provide an opportunity for continuous learning by company personnel (UN, 2011).

Ensuring the right to information, participation and access to remedy through grievance mechanisms is an essential basic step in addressing the power imbalances between corporations and communities that often underlie local conflict and human rights abuses (Ruggie, 2013; EarthRights International, 2013). Meaningful participation and ensuring full access to information are time-consuming processes, require culturally sensitive staff, and can be difficult to ensure when highly technical economic issues are at stake (Frankovits, 2006; Kemp and Owen, 2013; Kemp and Owen, 2017), which is usually the case for large-scale projects. Thus, meaningful participation demands that there is sufficient investment and time available for company personnel to engage genuinely with workers and communities, and should be seen as a long-term process of building relationships (Frankovits, 2006). Furthermore, in order to obtain trust from the rights-holders, it is vital that the legitimacy of a project and how it benefits the public *and* local communities is clarified (Tagliarino, 2016). It

is also important that company personnel do not break any promises they make to workers and communities (ICMM, 2014; Jijelava and Vanclay, 2017).

Step 2: Together with the rights-holders, investigate the social and environmental issues associated with the company's activities and planned actions, and establish the impacts

Social and environmental impacts can be interpreted in human rights terms, but not all impacts necessarily imply adverse impacts on human rights. To understand the human rights context of a project, company personnel need to know how a project affects the wellbeing, livelihoods and life aspirations of communities and workers. Companies need to have a thorough understanding of the community (recorded in a social profile) and collect robust baseline data. This information should cover all the pre-existing (i.e. before the project) relevant aspects of the livelihoods of the rights-holders established through primary data collection (qualitative and quantitative) and desktop research (Vanclay et al., 2015). This information is often gathered in environmental, social and health impact assessments (ESHIA) for a specific project phase or activity (see Vanclay et al., 2015). Company personnel need to dedicate time and effort (i.e. they need to go to the field) to engage with the rights-holders on a continuous basis, to investigate with them the ongoing social issues and impacts throughout all project phases. Companies should identify the impacts for each group of rights-holders (and the subgroups within these groups including children), and they need to understand the differential distribution of impacts.

Social impacts can be experienced or felt in corporeal, perceptual or emotional terms at various levels: the individual, the family or household, social groups or organisations and institutions, or as a community as a whole (Vanclay, 2002). Direct social impacts result from a proposed intervention or project activity. Indirect social impacts result from changes in the biophysical environment or from subsequent social changes (Slootweg et al., 2001; Vanclay, 2002). Cumulative impacts are defined as “the successive, incremental and combined impacts of one or more activities on society, the economy or the environment” (Franks et al., 2013, p. 202). In most cases, cumulative impacts arise as a consequence of multiple projects and/or activities. The social impacts experienced by vulnerable groups need to be identified separately from the generic impacts because they can imply specific human rights issues that could otherwise be overlooked (for example child labour, impoverishment of women in

displacement, and loss of Indigenous peoples' territory). Social impacts may apply only to one particular project phase or may occur across several phases. They can change over time and new social impacts may arise after years of operation of a project (van der Voort and Vanclay, 2015).

The HRS shows how each group of rights-holders can be linked to various social and environmental impacts that can adversely affect people's mental and/or physical wellbeing. Local communities inside and outside the fence comprise those individuals and families directly affected by the land acquisition and operational activities, and can experience economic displacement and/or involuntary resettlement. Frequently, communities outside the fence become the 'host communities' for the resettlement of communities previously inside the licence area and can experience adverse impacts that need to be analysed (Reddy et al., 2015). In a situation of involuntary resettlement, acquiring specific expertise can be useful to guide the examination of all tangible and intangible losses experienced by affected communities in a resettlement action plan (IFC, 2012). In addition, companies should engage with communities and workers in relation to how the project's environmental impacts can have adverse impacts on their livelihoods, health and cultures. Environmental impacts can lead to social impacts and have a subsequent adverse impact on human rights (Wright, 2008; see DIHR and IPIECA, 2013; Götzmann et al., 2016). Therefore, environmental issues need to be taken seriously, as they must not result in harming the health or livelihoods of local communities (de Schutter, 2009; Anaya, 2011; Knox, 2012). In addition, companies need to identify how project activities impact on the cultural and spiritual sites inside and outside the fence. Such impacts are especially detrimental to the wellbeing of Indigenous peoples and can promulgate resistance towards projects (Anaya, 2011; Doyle, 2015; Hanna et al., 2016b).

With the endorsement of the UNGP (UN, 2011), impact assessment also has to identify the social impacts experienced by workers in project sites and further down the supply chain (see Vanclay et al., 2015). When applying a human rights lens to project sites, companies have to outline the actual and potential impacts experienced by workers inside the fence (employees and sub-employees), as well as those throughout the supply chain. Social impacts on workers occur through, inter alia, poor working conditions, unfair labour practices, and environmentally-destructive operating practices (McBeth, 2008). Forced labour, the ill-treatment of workers, and child labour are examples of the abuses that can occur in project

sites and in the supply chains of companies (Mares, 2010; de Schutter, 2009; Wright, 2008). These abuses potentially have injurious (physical) impacts and can adversely impact on workers' families including children (Barrientos and Smith, 2007; Unicef, 2012). The project should actively engage with all groups of workers to understand what social impacts they may experience. It is important that throughout the process of engagement, the principles of participation, non-discrimination, equality and inclusion are observed (Stamford Agreement, 2003). Companies need to become aware of the potential differences in impacts experienced between female and male workers. For example, women can be faced with different wages and hiring standards than men, and are more likely to experience sexual intimidation and harassment. In some cases, where issues have already resulted in conflict or are highly culturally sensitive, it might be necessary to involve an independent party.

A recent topic in social impact assessment relates to awareness of the social impacts of the conduct of any private or public security forces linked to the project (Kemp & Vanclay, 2013; Vanclay et al., 2015). Most large projects have security staff, either as direct employees or as sub-employees through the subcontracting of a private security company. Government security forces (police, military) can also be involved in company activities. These groups can pose a severe human rights risk to local communities, for example when they are involved in enforcing expropriation of land. Public security forces can pose a risk to workers, communities and especially to women and children, particularly in situations of dispelling riots, or quelling violent or substantial protests (McFetridge, 2008). In 2000, governments, NGOs and companies established the Voluntary Principles on Security and Human Rights (VP) (VP, 2000). The VP require that companies should undertake a risk assessment to analyse the potential of violence in their operating context taking into account the human rights record of the security forces and local paramilitaries, and the root causes of (existing) local conflict and/or potential for future conflict. Companies should regularly investigate the interactions between private and/or public security forces and local communities and workers (see Columbia Law School and IHRC, 2015). Companies also need to take into account the wellbeing of the security personnel themselves, and assess their working conditions, which may negatively affect their wellbeing and behaviour.

Step 3: Assign each identified impact to its relevant human rights

When environmental and social issues are ignored or not properly addressed by the company, they can escalate into human rights impacts. When affected livelihoods are not adequately restored and improved (see IFC, 2012), affected peoples can experience serious impediments to the enjoyment of their human rights including the right to an adequate standard of living and rights to food, water, housing, education, work, and health (McBeth, 2008; van der Ploeg and Vanclay, 2017). More specifically, projects that obstruct access to essential public services including health care facilities, markets, and schools, adversely impact on various human rights including the right to health, the right to work and the right to education (van der Ploeg and Vanclay, 2017). In addition, a project's adverse impacts on the natural environment can underlie many negative social impacts, and consequently adversely impact on human rights. The cumulative nature of various forms of pollution, contamination and environmental degradation can translate into human rights abuses such as rights to adequate food, health, culture, and the right to life (de Schutter, 2009; Knox, 2012). Adverse impacts on the mental and physical wellbeing of rights-holders through environmental changes resulting in obstructed access to water sources, agricultural lands, and forests can also involve severe human rights impacts. For example, reduced access to water, which is a frequent outcome of projects, is a significant risk to local communities and their wellbeing, and constitutes an adverse human rights impact (DIHR, 2014; Kemp et al., 2010; Kevany and Huisingsh, 2013). Therefore, projects that ensure a safe, clean, healthy and sustainable environment is the basis of respect for, and realisation of a wide range of human rights (Knox, 2012; Brown, 2016).

Project staff need to become aware of various internationally-established human rights standards and frameworks that can be useful in identifying and addressing human rights impacts. In human rights terminology, the criteria of availability, accessibility, acceptability, and quality (the AAAQ Framework, DIHR, 2014) can be used to understand whether a project poses an obstruction to the realisation of economic, social and cultural rights, especially the right to adequate food (UN, 2010a), the right to water (UN, 2010b), or the right to adequate housing (UN, 2014b). To respect human rights means that, at a minimum, projects cannot adversely impact on the availability, accessibility, acceptability, or quality of essential public services including health-related facilities, goods and services, public roads,

education and water facilities, as well as individual or family housing and natural resources significant for people's wellbeing and livelihoods. When such impacts are identified, companies have a responsibility to restore and/or replace the affected assets in similar or better conditions (see IFC, 2012; van der Ploeg et al., 2016).

For each subgroup of workers, the assessment of human rights impacts should focus on identifying the conditions of employment (i.e. hours, wages, leave), forms of discrimination, the potential for harassment and intolerance in the workplace, workplace health and safety, freedom of association, and the effectiveness of existing grievance mechanisms. The ILO Decent Work Agenda (ILO, 2012) has established the key goals for workers around the world in improving various aspects of their labour conditions. Also, the risks and impacts identified in relation to workers' individual wellbeing (mental and physical health) as well as the wellbeing of their families needs to be analysed in human rights terms. Companies need to be aware that adverse impacts on labour rights can have a consequential adverse impact on: (1) the right to an adequate standard of living, including basic subsistence; (2) the right to work, including non-discrimination, decent work, and fair wages; and (3) the right to basic income guarantees for those who cannot work anymore (e.g. social security) (Hertel, 2009). When applying a human rights lens to the situation of workers, company personnel might discover that the social issues and impacts may constitute abuses of internationally-recognized labour and human rights, and that they therefore have a responsibility to change their practices.

Step 4: Establish the justification for action (i.e. the business case, in order to get adequate resources)

The corporate responsibility to respect human rights comprises a primary concern about risk to people rather than risk to business. However, it remains critical to develop and promote a strong business case with compelling reasons why human rights impacts and risks must be addressed (Shift, 2015). In order to address human rights impacts, company personnel likely have to compete for legitimacy and resources (Kemp and Owen, 2013). Even where there is an established corporate human rights policy, this may not be sufficient to construct a case that will win the resources needed to address adverse impacts. Company personnel will need to demonstrate the added value that will be gained from the resources they request. Through the establishment of a convincing business case, company personnel can ensure that the

necessary financial and human resources will be made available to effectively address the project's human rights impacts and risks (Shift, 2014). The development of a strong business case should include reference to corporate values, doing the right thing, and inspiring the workforce (Shift, 2012). Company policies that promote respect for human rights do not necessarily interfere with other company objectives, and may make 'good business sense' and be 'the right thing to do' (Shift, 2014). It should be emphasised that the timely assessment and addressing of social and human rights risks will enhance relationships with rights-holders and stakeholders, which will reduce the likelihood of local conflict, enhance certainty, maintain or improve a company's reputation leading to increased long-term success and the avoidance of costly delays (Franks et al., 2014; Vanclay et al., 2015).

Various other justifications can also help establish the argument why action must be undertaken. These include compliance with the requirements of national law, contract obligations, corporate codes of conduct, and international standards. Companies are subject to national law provisions, which may have human rights obligations, although not necessarily with an explicit human rights label (McBeth, 2008). Contractual obligations between the government and the company should provide for the adequate protection of human rights, including requiring contributions to provide positive human rights impacts such as through the company's investment in improving basic services, employment opportunities, and in respecting culturally-significant locations and/or resources (Ruggie, 2011; Brown, 2016). Contract agreements between the main operator and its direct employees, contractors and subcontractors should also contain clauses about respect for human and labour rights, which can be established through favourable employment conditions, health, safety, security, and observance of social needs nominated by the local community. In addition, compliance with international standards – for example, the International Finance Corporation's environmental and social performance standards (IFC, 2012) are generally accepted as constituting the international standard for all business activities (Vanclay et al., 2015) and cover some important human rights principles (van der Ploeg et al., 2016; van der Ploeg and Vanclay, 2017).

Step 5: Determine the appropriate department(s) in the company to address each impact

The assessment of potential and actual human rights impacts could reveal an overwhelming number and wide variety of human rights issues that need to be managed (Shift, 2012a,b). Therefore, each department needs to become involved in respecting human rights by understanding how their activities intersect with human rights (ICMM, 2013, 2014). The responsibility for addressing impacts has to be assigned to the appropriate levels and functions within the business enterprise. How this is done will depend on each company's corporate structure and procedures. The effective management of human rights risks and impacts will often require collaboration between departments. For example, adjusting workers' contracts to respect their rights involves cooperation between the human resources and legal departments.

With regard to communities, addressing human rights issues must be integrated in the policies and activities associated with community relations (Kemp, 2010a). Similarly, the policies and practices of construction, engineering and supply chain departments may need to be adjusted. There is a need to strengthen cooperation between the departments driving social and human rights compliance and those departments driving construction, purchasing, procurement or supply chain management decisions (Shift, 2012a). Social departments need to become more involved in decision-making regarding overall project design (Kemp, 2010b). When they have the possibility to propose alternatives, many of the adverse impacts on human rights will be able to be avoided.

The legal department usually plays a significant role in how the business as a whole approaches the corporate responsibility to respect human rights. However, legal departments may observe human rights as a risk or threat to the company, or might prefer to avoid the subject rather than engage meaningfully with it (Shift, 2012). There is a need for legal departments to go further than just the narrow legal aspects of business interests, and instead to conduct analyses of human rights risks and impacts and support the company to comply with the requirements set by international standards (such as the IFC social and environmental performance standards, see IFC 2012), which may go beyond those in national law. For example, in situations where labour conditions or community displacement involve human rights harm, even when the practice is in concordance with local laws, corporate lawyers

should extend their counsel beyond private and national law to the international human rights standards that business are expected to respect (Lewis, 2016).

A specific human rights function should be established at corporate headquarters and at local, project site levels in order to bring human rights expertise fully into business operations (Shift, 2012). A company's internal human rights advisor needs to have a strategic role in coordinating actions across departments. The responsibility of the human rights advisor is to look into the environmental and social risks and impacts of a project, and to examine where there are potential or actual human rights infringements. This person can direct and support departments in addressing the social and environmental issues in terms of their impacts on respecting human rights. A human rights advisor should play a coordinating role between the legal, financial and other departments to encourage their cooperation. With a mandate from head office, a human rights advisor can, for example, ensure that community relations managers have a place at the table in discussions surrounding the various technical phases of project design.

Step 6: Decide on the type of response and how it will be implemented

All human rights impacts need to be addressed; a company cannot offset human rights harm by performing good deeds elsewhere (Ruggie, 2008a). Actions that avoid human rights impacts are of primary importance and should be investigated with the rights-holders first (UN, 2011). This means that projects should not interfere in people's livelihoods – in their ways of making a living, in their family or cultural life. For example, to respect the right to property, the project area should be adjusted to avoid displacement and related human rights risks. Where projects are planned on the lands of Indigenous peoples, companies are expected to recognize Indigenous peoples' right to say no to any policy, plan, or project that may adversely affect their lives (Hanna and Vancley, 2013). This means that companies should particularly avoid acquisition of Indigenous lands. Companies should also avoid damaging land that has special (e.g. spiritual) meaning to people in order to respect the right to culture and the right to religion. However, changing or reducing land requirements including safety buffer zones may decrease the human rights risk of displacement and involuntary resettlement, but could increase the risk of adversely impacting on the right to health of the local population, especially when they remain close to the project.

In practice, the UNGP requirement of ‘not to interfere’ with all human rights can be difficult because, by their nature, large projects require vast amounts of land and significantly alter the natural environment, even when measures of avoidance have been undertaken. Thus, when avoidance is not possible, companies should develop and implement appropriate mitigation measures that restore and improve access to impacted assets and other experienced losses (IFC, 2012). The process and outcomes of compensation and livelihood restoration programs and remediation procedures need to result in respect for human rights (Shift, 2014). For example, the provision of only financial compensation for loss of land or for adverse health impacts would still likely result in human rights harm, especially to vulnerable groups (Cernea and Mathur, 2007; van der Ploeg and Vanclay, 2017). Also, in the development of resettlement action plans and compensation packages, the criteria of the right to adequate housing (UN, 2014a, 2014b) should be considered (van der Ploeg and Vanclay, 2017).

The content of mitigation and/or remediation plans are context dependent; in essence, to be effective, mitigation measures must be tailored to the rights-holders’ priorities (Götzmann, 2014; Watson et al., 2013). The development and implementation of mitigation and remediation plans need to have the goal of sustainable and inclusive development of local communities and be based on a process of meaningful participation (Vanclay et al., 2015). Mitigation and remediation measures need to reflect the needs and aspirations of various subgroups including women, men, and youth (the expectations and needs of community members have been obtained through step 1 and 2). Communities need to feel a sense of ownership in developing and implementation these plans, which will help them to better cope with the changes to their lives. Community participation in mitigation and remediation plans can contribute to increasing cooperation amongst community members and in building community cohesion, improving feelings of security, and strengthening people’s trust in the future, leading to fewer grievances, and less potential for conflict and human rights abuses (Vanclay et al., 2015).

For employees and sub-employees inside the fence, companies can avoid, mitigate and remedy impacts through employment policies and requirements, and by making actual changes in the workplace. Such improvements can include: providing reasonable and equal rates of pay to women and men; changes in the workplace that guarantee reasonable working conditions including training for local workers to improve their awareness of safety and health

risks; policies and engagement activities that aim to reduce discrimination in the workplace; and efforts to not obstruct the workers' right to organise. On a project site level, there should be regular gatherings and/or seminars with employees and sub-employees where issues, suggestions and questions can be discussed in an open setting. Through such meetings, information and training can be provided to help workers better understand their rights and responsibilities in the workplace.

Companies have a responsibility to use their leverage (UN, 2011) to pressure their (sub)contractors and other business partners inside and outside the licence area and throughout the supply chain to improve working conditions and meet if not exceed international standards. A company needs to clarify its requirements and expectations towards its contractors and sub-contractors regarding the health, safety and security conditions for employees. With regard to security staff, companies need to express the expectation of compliance with the VPs to contractors, which should be clearly articulated in contracts (VP, 2000). The main operator needs to establish training courses on security and human rights to make sure that the conduct of security staff is in line with the expectations in the VPs (EarthRights International, 2013). Also, companies need to undertake actions to address the harsh conditions in which security staff may need to work (e.g. in remote areas with little access to services such as shops, toilets, etc.) to protect them from adverse human rights impacts, such provision of access to proper water, food, shelter and clothing, as well as reasonable working hours. Companies may need to be 'creative' in using their leverage over their business relationships (Shift, 2014). In cases where noncompliance with expected standards is detected in the supply chain, the primary company should consider an appropriate response. Through leverage, a constructive and continuous dialogue can bring structural change over the longer term to respect labour and human rights (Shift, 2014).

Where an adverse impact on human rights has already taken place, a company should actively engage in the provision of remedy either directly or in cooperation with others (for example with the courts, the government, or other companies that may be involved) (UN, 2011). The responsibility to provide remedy refers to processes that can counteract or make good the adverse impact (UN, 2012). It is important that companies consider judicial and non-judicial forms of remedy (Ruggie, 2010; 2008a; UN, 2011). Although there are significant challenges in providing access to effective judicial remedy, national and local law systems are often

weakest where and when they are most needed (Ruggie, 2013). Compared to the legal counsel that companies have access to, local citizens are at a disadvantage by lacking sufficient knowledge of the legal and company procedures as well as financial resources for independent legal representation and advice (Columbia Law School and IHRC, 2015). Non-judicial forms of remedy should always be provided by the company and, in any case, may be more effective in repairing harm. However, non-judicial forms of remedy provided by the company must not restrict affected peoples from seeking access to courts (Knuckey and Jenkin, 2015).

Step 7: Track how the response is received by all rights-holders and ask for and act on feedback

The UNGP (UN, 2011, p. 23) state that “tracking is necessary in order for a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement”. For the purpose of sustainability reporting, human rights performance indicators can be developed that reflect on the outcomes of all mitigation and remediation measures. Increasingly, investors (export credit agencies, insurance companies, international development banks) require evidence of human rights performance from the projects in which they invest, or in which they may decide to invest (Vanclay et al., 2015). Ultimately, the effectiveness of responses must be investigated for local purposes and from the perspectives of the affected rights-holders (UN, 2011; Shift, 2015). The involvement of expert stakeholders can be important for a company to ‘know and show’ what is *really* going on. Stakeholders need to be engaged in a tracking process when their involvement increases the legitimacy and transparency of how a project manages its impacts on human rights (Shift, 2014). Also, other actors, such as National Human Rights Institutions (NHRIs) should fulfil a more prominent and independent role in tracking the human rights performance of a company, and investigate the process and outcomes of mitigation and remediation responses, especially in conflict situations (Shift, 2015; see also Götzmann and O’Brien, 2013).

As companies need to know whether their responses towards the grievances were considered adequate by the affected individuals or the community, it is important that company personnel regularly engage with communities and workers (going back to step 1 in the HRS). This often

means that companies need to have an understanding of the past, and they may need to acknowledge old grievances, regardless how dated they may be, in order to establish constructive relationships with the rights-holders (Doyle, 2015; Earth Rights International, 2013; Graetz, 2014). The participation of the rights-holders throughout project phases, as well as listening and acting on their concerns and grievances, are the only ways in which companies can become more aware of their adverse impacts and improve their practice in remediating and avoiding human rights abuses now and in the future.

Final comments

The Human Rights Sphere provides an inclusive picture of a project's rights-holders, the environmental, social and human rights risks and impacts of a project, and advice on the practices that should be undertaken to adequately avoid and address human rights infringements. The first three steps of the HRS will result in the identification of a wide range of human rights issues. Although this may be overwhelming to project staff, it is important that companies 'get started' and make genuine efforts to identify the risks and impacts. Operational staff need to learn how to think about the social issues in human rights terms, including which human rights principles and standards they should apply. They need to fully comprehend that business activities must not obstruct access to essential services, spiritual or religious sites, or natural resources. Also, projects cannot harm the health of local communities or workers. When projects impede this access, adequate ways to restore or improve access so that human rights are not infringed must be found. Company personnel need to be able to identify those human rights risks and impacts that require immediate action, especially when the harm has already occurred and when certain risks will be difficult to remediate.

While there is growing human rights awareness in business, the stronger concern for profit maximisation can still hamper, if not block, the adequate addressing of the actual and potential human rights impacts at the ground level. One way in which this plays out is that, all too often, promises are made to communities when the resources needed to implement those promises have not been secured and internal support has not been obtained. The effective implementation of the various steps of the HRS requires a change in corporate culture towards one in which identifying and addressing human rights abuses is not only accepted, but is

positively encouraged. Leadership in human rights is necessary at the corporate level in order to bring human rights risks and abuses to the attention of the Board. But, equally, personnel with human rights expertise and commitment must be established at the project site level to support local staff. There is a particular need to improve the practical implementation of the human rights principles of full access to information and meaningful participation, and to consider how these principles can be integrated in project procedures and decision-making. Only then will the full range of impacts and risks become fully identified, and plans for avoidance, mitigation and remediation become more effective. Human rights advisors have to play a key coordinating role in and between departments by indicating what adjustments to contracts, compensation plans, procedures, working conditions, and grievance mechanisms are necessary so that respect for human rights becomes more effectively implemented and realised.

The HRS provides insights into how project sites (whether they constitute factories, mines, railway lines, harbors, agriculture etc) are interlinked with human rights. However, there will likely be different human rights issues depending on the sector and location of operation. Human rights risks can differ according to the technical requirements of projects, as well as the local cultural, legal, political and socio-economic context of operations. Sometimes, the human rights issues may appear relatively similar across various types of projects, but what may be considered to be an adequate response by the local communities and workers may vary due to their different needs and local realities. We believe that the widespread use of the HRS will help to better comprehend and assist in the management of context-specific human rights issues.

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Chapter6

Conclusion and recommendations



Photo 6. A woman explains to company staff members how she felt that passing trucks had impacted her *machamba*, Nacala, Mozambique, 2015

Conclusion and recommendations

Introduction

The aim of this thesis was to strengthen the understanding of how companies respect, protect and fulfill human rights in practice, with a specific focus on project-induced displacement and resettlement (PIDR). I was established as a research intern in the community relations team of two multinational mining companies in Mozambique, where I undertook an analytical ethnography. I observed corporate practice as it actually happened, and I identified the challenges experienced by company staff in trying to respect the human rights of project affected peoples. In the course of my PhD, I developed two frameworks, the Human Rights Sphere (HRS) and the Human Rights Based Approach to Resettlement (HRBAR). These frameworks are intended to inform company staff, practitioners and applied academics in a wide range of fields – including community relations, impact assessment, resettlement, human rights and project management – about the implications of the corporate responsibility to respect human rights in the construction and management of large-scale projects. The application of these frameworks will enhance awareness of human rights within corporations, and subsequently enhance the implementation of the corporate responsibility to respect human rights.

The main research question addressed in the thesis was: *How can the implementation of the corporate responsibility to respect human rights be improved at project sites, in order to enhance the social sustainability of local communities?*

The chapters that presented the HRS and HRBAR, also described existing human rights principles and standards in the context of project sites. The HRS and HRBAR frameworks presented an ideal although potentially realistic picture for how respect for human rights could be implemented by staff members in real world projects. In this concluding section, I will critically reflect on the implementation by companies of corporate human rights responsibilities by suggesting that there may be limitations to respecting all human rights standards. The various human rights can potentially be conflicting, especially given the complexity experienced by most large projects that are engaged in project-induced

displacement and resettlement. Furthermore, existing human rights standards, especially in relation to PIDR, do not adequately instruct companies how they should actually implement respect for human rights. It may well be (or perhaps very likely is the case) that other international standards have greater potential to effectively protect project-affected peoples from social and environmental harm. In the following section, I provide insights into how and why human rights impacts occurred in the two projects I studied.

Challenges to respect human rights in the two project sites

Despite their differences, in both projects there were similar explanations for why and how impacts on communities occurred, how these impacts were subsequently attempted to be addressed, and why these attempts did not necessarily result in effectively mitigating and remedying the human rights impacts. One of the recurring justifications given by company staff was that the Mozambican context was a difficult environment to work in. A second issue related to the internal dynamics within the companies. Therefore, in Figure 1, I differentiate between the precipitating factors to human rights impacts as being the internal company factors, and the contextual challenges. Figure 1 outlines how human rights impacts occurred through poor process, poor outcomes, and as a consequence of the cumulative effects of these initial impacts.

I would like to stress that the underlying cause for the occurrence of human rights impacts is inadequate processes, e.g. a lack of information, a lack of meaningful participation, tremendous delays, and a lack of effective grievance mechanisms. Human rights were impacted by the poor outcomes of resettlement. For example, there was reduced food security, inadequate housing, and lost access to markets and job opportunities. Also, the plans and procedures that attempted to restore access to land, food, and water were not adequate in practice, and there was also marginal attention given to vulnerable households. Altogether, these human rights issues in both processes and outcomes of compensation and resettlement resulted in the manifestation of community protests. Ultimately, because these impacts and insecurities were on-going, with no timely information and effective remedy being provided by the two projects, additional human rights impacts were created.

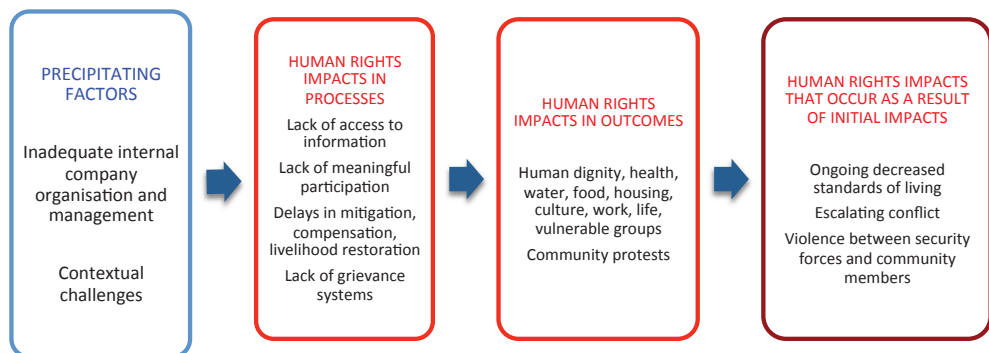


Figure 1. How human rights impacts occurred

Many of the human rights impacts that occurred can be traced back to the initial organisation of the two projects. First, the human rights issue of displacement and resettlement was not adequately planned prior to commencement of construction. Furthermore, various aspects of company internal management at the start of the project, together with major contextual challenges, resulted in the weak implementation of appropriate processes and procedures. In each project, at commencement, there was a lack of social leadership on site, which resulted in a lack of planning and ad hoc community engagement activities. Also, at commencement of the projects, many of the staff members were not adequately experienced or trained for managing the very conflict sensitive and emotional issues that were encountered. A further issue was that there were inadequate financial and other resources to enable the extensive contact with the communities that was needed. Due to the considerable time pressure to get the project up and running, there was inadequate time to enable the genuine involvement of local community members, or to provide them with sufficient information and have participation sessions at all phases of decision-making. Instead, the process of compensation and resettlement was rushed and characterized by many mistakes, incidents of corruption, and delays in the provision of compensation and replacement housing.

Given the absence of a well-prepared team on site at commencement of project development, the contextual aspects further exacerbated the difficulties in managing displacement and resettlement. The poor quality of the local roads and the long distances made it difficult to

access all the communities on a timely and on-going basis. Furthermore, the remoteness of some of the communities (especially in the linear project), as well as high levels of illiteracy made it time-consuming for local people to comprehend the project, and especially to consider what the project's technical requirements would mean in reality for their families and livelihood security. Most of the staff members emphasized the lack of government experience and capacity in managing some fundamental aspects of the resettlement process, including managing land ownership records, maintaining a database of citizens, and organizing and coordinating community meetings.

After some years of operation, the companies did undertake various actions to reduce the impacts and improve the delays in compensation and resettlement. Each project site appointed a General Manager (for social) at a similar organisational level to the general managers of the other major departments. The reporting lines were adjusted so that the manager for social had more influence at the local site level and was able to access greater financial resources. In addition, a capacity building program was established to improve the skills and the practice of the community relations teams in the main company and from the contractors. A grievance management system was also established and improved.

Nevertheless, the corrective actions undertaken by the social departments were still influenced by major time pressures from within the business (other departments) and continuously changing construction activities and plans. Also, the community relations staff were not really able to regain the trust from most community members because no effective (long-term) remedy for the most severe human rights issues could be provided. For example, distances to markets remained a problem in the mining project resettlement location, as well as the risk of reduced access to water and to arable land for agricultural purposes. For the railway project, the delays in housing construction of up to three years and inadequate temporary replacement housing as of form of mitigation resulted in one community thwarting the construction of a specific section of the railway line for almost two years. As a consequence of these issues, there were an increasing number of protests actions undertaken.

Both companies had human rights policies in place, as well as other social policies intended to protect communities from the adverse impacts of project activities. Both companies also had explicit commitments to contribute to local sustainable development. In addition, both companies had developed an impressive array of documentation, plans and databases containing detailed information about the local communities and the affected households,

stakeholder engagement plans, risk databases, grievances databases, management plans, and so on. To develop these studies and plans, the companies involved a range of expensive foreign consultants. But, *why* is there such a major gap between corporate policy commitments, the investment in obtaining information, and, on the other hand, the actual implementation of corporate human rights policies and management plans? This is discussed below.

A discussion on the 'why': insights from the field of Project Management

Explaining why human rights impacts occurred is important to know how they could have been avoided. In the field of human rights, however, there has been only a limited focus on identifying the root causes of adverse human rights impacts (see Klein, 2007; Wright, 2008; Marks, 2011). Ruggie (United Nations, 2008, 2011) established several of the root causes underlying why business and human rights problems have occurred. He emphasized the inability of governments to effectively address business-related human rights harm due to their lack of capacity or lack of political will. He utilized an institutional argument as the cause and the cure for addressing human rights abuses; if the current economic and political institutions provide the enabling conditions for human rights abuses, then the solution might lie in changing these conditions. In addition, Ruggie (United Nations, 2008) also stressed the problematic quality and implementation of impact assessment and management plans. He invented the concept of human rights due diligence, a process that companies should undertake to comply with their responsibility to respect human rights. However, Ruggie did not touch upon another fundamental issue, namely how to achieve the implementation of these human rights procedures so that they result in actual enhanced social sustainability. I observed that most well intended policies written by companies manifest the problem of implementation at the project site level.

Causes of human rights impacts can be created at an individual, organizational and contextual level. In the two projects studied, there were differences of opinion about what were the underlying causes of human rights impacts. A diversity of opinion makes it difficult to find effective and practical solutions. Some staff members stated that it was extremely difficult to work with the government and that the lack of capacity of government staff obstructed company staff in doing the right thing. Others emphasized aspects of the local context

including the challenges in working with local communities, for example the need to repeat information over and over. They also indicated that the relatively high levels of alcoholism and illiteracy made it difficult to communicate with them. Also, some staff expressed that a lack of leadership and organizational commitment from higher levels of the company hampered them in gaining adequate access to resources. Other staff members pointed at specific individuals in the company who exhibited certain positive or negative behaviours in relation to community interaction and/or the championing of social and human rights issues within the company.

Curiously, the Project Management literature does not consider the management of social and environmental impacts of projects, let alone human rights (Hanna et al., 2016). However, the discipline is grappling with an evident gap between their theoretical endeavours and the actual practice and performance of projects. Morris (2013, p. 270) concluded that “project management as a discipline is neither yet reliable enough nor engaged enough in improving its clients’ performance”. Furthermore, Project Management scholars have emphasized the need for more research on the actuality of projects by analyzing how project management theory relates to project management practice (Cicmil et al., 2006). The Project Management literature describes various explanatory factors for failures regarding technical aspects of projects, such as project delays (Baldwin and Bordoli, 2014), time pressure (Nordqvist et al., 2004), and continuous changes in project design (Yap et al., 2017). These issues have also been observed in the two projects studied for this PhD research. Morris (2013, preface) concluded that the main underlying cause for technical problems in many projects is the lack of competent people: “they didn’t have experience, missed things, or were overtly influenced by inappropriate drivers”. From my observations in the social departments of large-scale projects I come to a similar conclusion.

According to the Project Management literature, ‘soft skills’ are argued to be essential for the successful completion of projects. Thomas and Mengel (2008, p. 304) emphasized that, in the complex realities of projects, “the trend towards professionalism and the focus on standardization come into question as the behavioral and personal competencies of project managers outside of project management standards appear to be more relevant for their workplace performance than the tools and techniques emphasized in the standards”. Thus, in order to achieve improved project performance, besides training in technical skills, a stronger

focus should be placed on the training of ‘soft skills’ of individuals, such as personal competencies, ethical behaviour, effective communication, cooperation, and teambuilding (Pant and Baroudi, 2008). In my view, this also applies to community relations departments. ‘Soft skills’ are of particular importance here because staff have to manage extremely conflict-sensitive situations. However, there tends to be little attention given to these matters in the hiring of community relations staff or in providing extra training opportunities when needed. This can be explained from a project management perspective that considers social as a ‘non-technical’ risk, and therefore as external to the business (Hanna et al., 2016). My research findings showed that social and human rights risks were only taken seriously after adverse impacts had occurred and negatively affected the business (in terms of its reputation, delays in construction and financial losses). Only then were community relations teams better resourced to address these essential issues.

In the two project sites studied, most local staff members from the main companies were experienced in working with local communities, but primarily in the context of NGO projects. Most staff members did not have previous experience in corporate community relations practice, and thus were not prepared for the procedures of compensation, negotiation and resettlement, and handling conflict-sensitive situations. This meant that almost all staff members were learning on the job. In the railway line project, the outsourcing of community relations activities complicated the situation resulting in weak communication regarding problems that had occurred with certain communities. Also, in the railway line project the contractor had hired very young people with no professional resettlement or otherwise related experience to lead negotiation and payment processes with community members. This resulted in many issues of corruption, and bad behaviour towards local communities. Also, internally, there was little reflection on mistakes that occurred in the communities, and there was no internal ongoing conversation or feedback-loops on how these issues could be solved in a timely manner. Especially in the railway line project, only after the conflicts with community members had escalated and reached higher management, was there some internal discussion to develop an appropriate communication strategy.

The motivation of individual team members also played a role. Community relations work is a highly demanding professional task, but for some staff members it was just a job. Not everyone was eager to work with the communities, which often involved spending many hours each day in a dusty and hot environment. Especially in the mining project, which was

located in a very hot province in north-west Mozambique, there was a strong preference by staff to stay in their office or car with the air conditioning. Typically, the staff working in higher-level management were more competent, more motivated, more dedicated, and more experienced (but few had previous experience with resettlement). There were many instances where the managers did the work that was meant for junior staff, but the junior staff lacked motivation, were insecure, did not have experience or just did not do it right.

In their recent paper, Owen and Kemp (2017) found an overall absence of social management capability in mining companies. They observed a pattern of poor social performance, especially in managing resettlement, which indicates a lack of capacity and understanding by the industry as a whole. The Project Management literature, however, shows that poor management is evident in many types of projects. In the construction and operations of large-scale projects, many individuals, both from technical and social departments, need to be trained and go through a learning process, which inevitably involves errors. However, the lack of experienced professionals and a ‘learning on the job’ approach that is deployed in high-risk and conflict sensitive project development will have disastrous consequences for project-affected communities.

Limitations in respecting the rights of project-affected peoples

The corporate responsibility to respect human rights (United Nations, 2011) means that no individual, family and/or community can be made worse off by company activities, or, as a consequence of the activities of a company’s business relationships. As I have outlined in the Human Rights Based Approach to Resettlement (Chapter 4), the land requirements of projects can be in opposition to many human rights, especially the human rights of property, self-determination, culture, housing, and freedom of movement. From an international human rights law perspective, forced evictions constitute a gross violation of human rights (United Nations, 2014). In Chapter 4, drawing from various United Nations human rights documents, I suggested that project-induced involuntary resettlement that does not result in livelihood restoration can be regarded as a forced eviction and thus can constitute a gross violation of human rights. To mitigate the impacts on fundamental human rights, and make good the harm that will inevitably be done by removing assets and/or people, project operators should go

way beyond Ruggie's approach of 'doing no harm'. Companies thus have to fulfil human rights and contribute to their progressive realization in order to achieve socially sustainable outcomes for local communities.

The improvement of resettlement outcomes has received major attention by project operators (see Owen and Kemp, 2017). In the two project sites studied, affected peoples had access to financial compensation at replacement value, and significant investments were made by the companies to improve housing, access to water and other public services. The companies seemed comfortable in undertaking the technical aspects of resettlement, such as the design of new resettlement site locations, the construction of new housing, health clinics, schools, and water pumps. It is evident that this is important so that basic needs become secured and improved. However, one of the main observations in this Phd research is that the implementation of 'process rights' failed.

A human rights perspective is concerned with the adequacy of the outcomes as well as the adequacy of the process through which these outcomes will be achieved. In Chapter 4, I outlined the human rights principles to be observed in the process of resettlement including ensuring adequate access to information, meaningful participation, respecting human dignity, and adequate grievance management. In the two project sites, notwithstanding the improved houses and facilities, the resettlement process, including the ways affected people experienced being treated by company staff, and their lack of access to information and participation in the assessment, negotiation and compensation procedures, turned out to be detrimental to the restoration of their livelihoods.

With the improvement of international resettlement standards (particularly IFC, 2012), projects need to ensure the provision of financial compensation at full replacement value. While this is a right to be secured for all project-affected peoples regardless of the status of their land title, it should be stressed that more money does not necessarily bring affected families into better situations. The inability of many of the affected peoples to invest the financial compensation into new livelihoods is a major cause of their impoverishment. This problem is well documented in the literature (Cernea and Mathur, 2007; ADB, 2014), is well known by SIA practitioners (Vanclay, 2017), and was acknowledged by most staff members. Already in the 1990s, Cernea (1996, 2003) advocated the need for social investment (benefit sharing) in addition to financial compensation to avoid the impoverishment resulting from the inability to invest in new livelihoods.

In Chapter 2, I outlined the challenges in the mining area in Tete, in which thousands of people that were affected by each mining project have been compensated in cash, with little to no opportunities for alternative livelihoods. Many conflicts over access to land in the mining areas have erupted and, at the time of writing this conclusion, have resulted in the death of at least one local villager, who was shot by local police in a protest about regaining their access to grazing lands. Although from a strict legal perspective, the mining company is not responsible for any impoverishment resulting from ‘bad investments’ made by the affected people, from the perspective of international standards and human rights there is a responsibility to ensure that people are not made worse off. Within the companies studied, one objective was to pay affected people as quickly as possible, and staff did not consider it the company’s responsibility to ensure affected people would be able to restore their livelihoods. However, the corporate responsibility to respect human rights would imply that displaced peoples should be given support to become fully re-established, thus social and financial counselling should be offered to ensure they do not become worse off.

De Wet (2006) argued that the failures in resettlement could be explained either by the inadequate input approach or the inherent complexity approach. A lot can still be gained by increasing input by means of more financial and human resources, the training of staff, improving early planning, and managing ‘social’ before construction commences so as to avoid the significant time pressures community relations staff are otherwise faced with. In both projects, most staff members lacked the skill and experience to undertake participation activities, which is a difficult undertaking in any case but especially when such high risks for affected peoples are at stake. However, regardless of a more capable community relations team, there are also inherent complexities in resettlement, especially in poor and remote contexts. Community relations staff are confronted with the issue of how to restore subsistence livelihoods of communities, especially when large-scale project developments take away the possibilities of restoring traditional ways of living. A farmer in Nampula province in Mozambique commented that “human rights is what we always had in nature”, and, “we need freedom to live as we did before” (Santarelli et al., 2015). But, due to the project, the ability to stay and continue the way of living as before was lost. New housing, infrastructure, water, and health and education facilities (which can be human rights fulfilments in itself) cannot mitigate or remedy the human rights impacts related to lost access to land and natural resources. In addition, the speed by which the transformation from traditional lifestyles to modern, cash-based (and often from rural to urban lifestyles) takes

place inherently causes suffering to those people affected. Many Indigenous and other minority groups are resisting these fundamental changes to their livelihoods and demand respect for their right to self-determination (Hanna and Vanclay, 2013).

How can the implementation of respect for human rights become improved?

The endorsement of the UNGP (United Nations, 2011) led both companies to align their human rights policies with the expectations of the corporate responsibility to respect human rights. In the railway line project this also involved human rights training and workshops for all the project teams, and specific training for security officers. Also, the human rights manager from the railway line project developed and applied an internal human rights risk assessment tool, the outcomes of which were subsequently linked to the project's social impact management and development plans. Also, the mining project engaged an external organization to undertake a stand-alone human rights impact assessment of its operations. However, in both companies, the human rights due diligence process was treated as an end in itself, rather than being a means of ensuring ongoing adaptive management. Perhaps most notably, human rights due diligence was not undertaken prior to acquisition and/or construction of the projects.

On a more positive note, Ruggie's concept of leverage seems a promising approach in improving awareness about human rights issues and changing the actual practice on the ground. Leverage can be understood as "the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact" (United Nations, 2012, p.7). Managers from the various company departments (communities, construction, health, safety and security) performed a major role in improving the awareness of social and human rights issues with regard to the contractors. As I outlined in Chapter 2, the staff of the community relations team in the multinational enterprise formed a critical role in building the capacity of the consultancy that was hired to undertake community relations activities. Furthermore, the community relations team of the multinational company trained a Mozambican organization to perform part of the resettlement activities in line with international standards.

Even though not studied in-depth, I also noted that capacity building was undertaken by construction managers of the multinational company to the managers and other staff of Chinese and Mozambican contractors.

Besides efforts to address the impacts and gaps caused by contractors, major efforts were also undertaken inside the two companies to stimulate behavioural changes for their own staff. The companies particularly focused on changing perceptions and behaviour regarding safety and security issues. Subjects discussed on a daily to weekly basis were, for example, why and how to wear seatbelts, speed limits, the check on alcohol use, and how to handle heavy loads and trucks. Also, these moments were used to show mistakes or (fatal) accidents that had occurred during construction activities, and how these could have been avoided. Also, how one treats one another in daily work activities and how to point out dangerous behaviour of another person was discussed. These awareness-raising activities were held on a daily or weekly basis and required attendance of all the staff from all the departments.

Similar to the on-going awareness-raising activities regarding safety and security in relation to construction and operations, awareness raising regarding the local environment including the impacts on communities should become organized. Harvey (2014) emphasized that, in order to achieve better social development outcomes in project site areas, rather than reaching out to communities with promises that are difficult to fulfill, companies need to focus more on ‘in-reach’, which means “working to change the behaviors and thence attitudes of its own employees across the full spectrum of the workforce” (Harvey, 2014, p. 9). Harvey (2014) proposed the idea of local induction training that should sensitize all staff members for the local environment, communities, cultures, the project displacement and resettlement issues, as well as other challenges such as environmental changes caused by the project that affects peoples’ livelihoods. In my view, in high-risk projects, it is imperative to improve staff members’ awareness of the human dignity of not only their colleagues by considering their safety and wellbeing, but also that of community members (severely) affected by the project. Improved awareness about social and human rights impacts can result in changing shortsighted convictions and behaviours of staff members regarding the surrounding and affected communities. This can lead to improvement of early-on management.

In order to answer the main research question, an important element of this PhD research was to consider whether there is a need for more explicit mention of human rights duties in the requirements of the International Financial Institutions (IFIs), or whether their existing performance standards suffice in adequately describing what projects should do to address all adverse impacts on human rights. In the actual design and implementation of projects, an implicit approach may avoid political controversy that can exist about the human rights concept, particularly in governments (Frankovits, 2006; Freeman, 2013). Also, the performance standards of IFIs, especially the IFC performance standards, have significantly improved over time, and are now utilized by the largest credit agencies, regional development banks, multinational corporations and governments involved in project design and approval (Vanclay et al., 2015).

In this PhD, I compared the IFC performance standards, particularly the *IFC PS 5 Land Acquisition and Involuntary Resettlement* (IFC, 2012), with the expectations established in human rights standards regarding displacement and resettlement, specifically the *Basic Principles and Guidelines on Development Based Evictions and Displacements* (United Nations, 2007). I concluded that the IFC performance standards were reasonably aligned with human rights standards. The IFC PS 5 can be useful for company staff because it provides an extensive and practical oversight of most of the issues that need to be managed in resettlement. In contrast, even though the Basic Principles (United Nations, 2007) provided relevant minimum standards in terms of human rights, human rights scholarship is marginally engaged with the issue of project-induced displacement and resettlement. Human rights scholars who specialise in the economic, social, and cultural rights seem to lack awareness of the significant role of large-scale project development in fulfilling (and obstructing) these rights (see for example Baderin and McCorquodale, 2007). Perhaps one reason for this is the general exclusion of human rights rhetoric in development theory (Freeman, 2013), which is also shown by the absence of human rights terminology in most development banks. The avoidance of explicit requirements regarding international human rights law in IFIs has been an ongoing topic of discussion (see Alston, 2015; McBeth, 2008).

In chapter 4, I concluded that the implicit nature of the human rights approach in the IFC PS 5 understates the risks to humans involved in project development. An explicit human rights approach identifies potential risk areas for litigation by translating social and environmental impacts into potential or actual human rights violations. Also, from a human rights activist perspective, human rights language can be used as a powerful rhetoric for demanding corporate accountability. A company accused of human rights violations is more likely to face reputational damage, financial lender scrutiny and shareholder retreat from investments than do the accusations of a company being involved in social and environmental impacts. When resettlement requirements become framed in human rights language, which I have illustrated in the conclusion of Chapter 4, all actors can become more aware of the significance of the issues at stake for project-affected peoples.

Still, companies may be more inclined to adhere to IFIs performance standards than to international human rights standards, especially when companies seek financial support. So then, would that make any difference? IFIs performance standards are, in principle, pro-project, and the requirement of ensuring full access to information and meaningful participation (basically free, prior and informed consent) can form a major challenge to project approval. The performance standards are meant to avoid and reduce adverse impacts and manage the issues as adequately as possible, with the implication that project finance is guaranteed. The integration of human rights principles into project design and management procedures, on the other hand, will imply enabling the meaningful participation and obtaining the consent of those potentially affected. Thus, the full integration of these human rights principles into development plans and projects would leave open the option of whether projects are actually being approved, designs can be significantly altered, or whether existing projects can be stopped or relocated elsewhere. Given the aim of a human rights based approach to achieve more equal power relationships, genuine respect for human rights would mean that leaders and staff in governments, in financial institutions, and in companies with an interest in projects, must start to behave very differently towards local community groups (Twomey, 2007).

Recommendations: improving corporate human rights performance

Human rights standards form a useful tool of analysis regarding the impacts and changes observed in project-induced displacement and resettlement. But, the existence of human rights standards have so far not led to the adequate protection of project-affected peoples. The added value of a human rights based approach is debated (see Frankovits, 2006; Twomey, 2007), and it is true that the mere integration of human rights into business procedures may not, in itself, guarantee more sustainable and equitable outcomes. However, my analysis has demonstrated that, if human rights principles had been fully applied throughout the processes of compensation, resettlement and livelihood restoration, the outcomes would have been different from the experience of project-affected peoples. One of the primary concerns of the human rights based approach is generating development outcomes that are supported by project-affected peoples through ensuring access to information and meaningful participation.

The dominant development paradigm is associated with local conflict, hardships and human rights violations (Wright, 2008). I assert that only through meaningful participation large-scale projects can become experienced as more positive and inclusive. However, decades or even centuries of obstructed participation and access to information will need to be overcome first; many people including from all actors in society (government staff, company staff, civil society staff, community members) will need to learn how to meaningfully participate in decision-making, together. Therefore, a lot of patience is required from all.

Each chapter in this PhD provided a set of practical recommendations for how companies should improve their corporate procedures and practice in order to comply with the corporate responsibility to respect human rights. Below, I highlight a selection of them, comprising the key messages in terms of improving corporate human rights performance and their contribution to social development.

- Adherence to the corporate responsibility to respect human rights means that the implementation of environmental and social management plans needs to become improved. To better identify and address the human rights dimensions of project proposals, environmental and social impact assessments need to be complemented with human rights expertise. This may require additional capacity building within

ESIA consultancies on how the risks of projects can be addressed so that human rights awareness is raised within project operators.

- Adherence to the corporate responsibility to respect human rights requires a couple of changes in how new projects are developed and in the way projects are acquired. First of all, investment teams and acquisition teams must identify potential impacts on communities so that a qualified community relations team with adequate technical and social skills can be set-up early on. Second, this community relations team needs to involve a high level of leadership who is able to convince higher management of getting access to adequate resources. The social manager is also responsible for designing and implementing the procedures and processes that include the objectives of full access to information and meaningful participation. Also, the community relations team must start ongoing team-building activities to improve awareness for the conflict sensitive issues they have to deal with, and to improve communication amongst staff members. Inexperienced staff members must have an experienced supervisor. Eventually, regular feedback sessions need to be organized in order to identify when and why mistakes occur and stimulate an individual and group-learning process.
- Respect for human rights means that the human rights principles of access to information and meaningful participation must become standard practice by business in displacement and resettlement activities. Especially, social performance and human rights staff members in companies need to focus on identifying strategies for how to, given the contextual issues, ensure access to information and meaningful participation as much as possible. Also, they need to monitor implementation of these strategies on an on-going basis, through moments of sharing experiences, feedback, and advice.
- To respect the human rights of project-affected peoples, project managers need to secure longer-term investments for livelihood restoration activities (this may be up to ten years). Much deeper thinking on how livelihoods can become adjusted should result in more effective plans and strategies for project-affected peoples. New forms of income-earning activities, social relationships, and new skills may need to be obtained

so that people can prosper. This can only be achieved by the meaningful participation of those people affected, and especially vulnerable households.

- Improving the implementation of the corporate responsibility to respect human rights would require a more prominent role of National Human Rights Institutions (NHRIs) in monitoring the resettlement activities of business. In many countries, this implies that NHRIs need to receive capacity building as well as stronger mandates to fulfil an independent role in monitoring, evaluation and investigating claims of human rights violations.
- The corporate responsibility to respect human rights requires changing the training and education of students. “If students are to become more holistic thinkers, having regard for issues such as ethics, logical integrity and emotional acceptance, greater emphasis needs to be placed on the qualitative sciences” (Pant and Baroudi, 2008, p. 127). The United Nations Principles for Responsible Management Education stressed the need for educating and training graduates in business schools regarding the human rights principles directly relevant to business operations. Thus, academics and policy-makers need to think critically about how to change the current education system, especially disciplines of (mineral) economics, economics and business, project and supply chain management, and law studies. In order to solve the business and human rights predicament, students from various disciplines need to be trained with a holistic mindset that includes a focus on developing their soft skills.

It is of vital importance that more academic research is undertaken in the real world. The chosen research methodology in this PhD research involved becoming an intern in two mining companies, and this was essential for comprehending the real-life challenges of the business and human rights predicament. I believe that more research should be undertaken by taking on a practical and qualitative approach by which the researcher becomes immersed in the reality of the topic under investigation.

Having completed this PhD research, there are still many issues that would need closer scrutiny, and therefore would be interesting subjects for further research. One of my conclusions is that much more attention needs to be given to improving access to information

and meaningful participation. How this exactly has to be done in practice, given many contextual aspects of project areas, will be the main challenge for project staff. Therefore, more research inside of companies should be focussed on identifying best practice strategies on providing project-affected peoples adequate access to information. Also, successful and failing strategies of meaningful participation should become identified. Such an analysis can result in a useful tool for companies aiming to reduce and avoid local conflict, improve their resettlement processes and thus have better human rights performance. In addition, more research conducted on the human rights function within business can improve the understanding of the challenges and successes of internalizing human rights. Eventually, there exists a major shortcoming in the literature on the social and human rights impacts of linear projects. Therefore, more research is needed on the human rights challenges that are specific to linear projects, and how these should be managed.

On the overall, I find that the social dimension of sustainability needs to receive more attention in academic research. This can be achieved by conducting research on the social and human rights dimensions of Project Management. Often the perspectives from communities are investigated, which is ofcourse of extreme importance, but equal attention should be given to how company staff contribute to, or obstruct, achieving more socially sustainable outcomes for communities. Research should focus on how community and company perspectives can become better aligned. This also implies that researchers in the social and human rights (activist) area need to better understand internal company mechanisms, and be open minded to comprehending how company staff are operating in practice including the challenges they grapple with on a day to day basis.

An element that has not received much attention within project management, human rights, and impact assessment research is how staff within corporations manages environmental issues and impacts. Over the last decades, a lot of conflict and human suffering is caused by environmental impacts that have not been adequately mitigated by business enterprises. The performance of environmental departments, the practice of staff and their challenges experienced, is therefore also vital for improving implementation of the corporate responsibility to respect human rights. More interdisciplinary and empirical research in this area can contribute to the recent development in the United Nations of establishing a new human right to a clean, healthy and sustainable environment.

International and human rights law students should focus on exploring the possibilities for having the adverse impacts of multinational corporations investigated in international courts. When multinational corporations face a risk of litigation in international courts, this can form a strong incentive for powerful individuals in companies to bring about more critical change internally, which will have beneficial outcomes for communities at the local level.

Final comments

To improve the implementation of the corporate responsibility to respect human rights, companies have to change from the inside out. Staff members including the managers from all departments have to look critically at their existing management plans and procedures, and look where there are gaps in terms of human rights breaches. Undertaking environmental and social impacts assessment and implementing management plans is an essential element of achieving respect for human rights. The Human Rights Sphere should be utilized to better understand the human rights dimensions of project sites, and how to address these. Ideally, no plans separate from social management plans regarding respect for human rights should be developed, because this will likely result in box ticking. There is a need for an integrated whole.

Companies need to move away from solely focusing on achieving outcomes and results; a human rights based approach is as much concerned with the process. Implementation is key. Adequate implementation can only be achieved when the capacity of staff members is increased. Staff members need to become trained in their technical and in their soft skills especially when involved in managing sensitive and complex situations in displacement and resettlement. Also, the staff in multinational corporations have a key role in training the staff of local business enterprises (their contractors) in developing awareness of international and human rights standards, and by training their soft skills that ensures more adequate implementation of social and human rights policies.

The corporate responsibility respect human rights means in reality that corporations should follow all relevant human rights standards, related to the specific human rights issue they are involved with. Companies may not be able to manage all human rights issues at the same

time, or avoid all human rights impacts. However, they should create the enabling conditions for project-affected peoples to restore and improve their livelihoods. Therefore, human rights principles of access to information and meaningful participation must receive much more attention in companies; currently these aspects are severely undermined and therefore result in weak livelihood restoration outcomes. Especially in developing contexts, changing the subsistence livelihoods requires very careful consideration of realistic alternatives for livelihood restoration.

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Nederlandse samenvatting (summary in Dutch)

Introductie

De activiteiten van bedrijven kunnen positieve en negatieve gevolgen hebben voor de mensenrechten van lokale bewoners. In 2011 heeft de Verenigde Naties een nieuwe richtlijn geaccepteerd die de verplichtingen van overheden en bedrijven in geval van bedrijfsgerelateerde mensenrechten schendingen verduidelijkt en bevestigt. De acceptatie van deze richtlijn *the United Nations Guiding Principles on Business and Human Rights* vertegenwoordigt, voor het eerst in decennia, een internationale overeenstemming op het gebied van mensenrechten en bedrijfsvoering. De *Guiding Principles* stelt vast dat bedrijven, ongeacht de mensenrechten verplichtingen van overheden, de verantwoordelijkheid hebben om mensenrechten te respecteren in relatie tot hun eigen activiteiten en in relatie tot de activiteiten van zaken partners. Sinds de acceptatie van de *Guiding Principles* hebben honderden multinationale ondernemingen bevestigd dat respect voor mensenrechten een centraal onderdeel is in hun bedrijfsvoering. Echter, er vindt weinig onderzoek plaats naar de implementatie van de *Guiding Principles* en wat het effect is voor lokale bewoners die de gevolgen van bedrijfsactiviteiten ondervinden.

Grootschalige projecten hebben een negatief imago rondom mensenrechten omdat de landaankoop voor deze projecten vaak gepaard gaat met de onvrijwillige uitzetting van lokale bewoners, en als gevolg hiervan deze gemeenschappen slechter af raken. Sinds 1980 hebben talloze antropologische onderzoeken geconcludeerd dat de gevolgen van landonteigening en het verplaatsen van dorpen voor ontwikkelingsprojecten, met name wanneer het kwetsbare bevolkingsgroepen betreft, zorgt voor de verarming van deze groepen. Deze verarming houdt in dat de mensenrechten van getroffen bewoners en gemeenschappen niet voldoende kunnen worden gewaarborgd. Volgens schattingen worden 15 miljoen mensen jaarlijks onteigend voor grootschalige projecten en betreft het met name inheemse volken en groepen die afhankelijk zijn van zelfvoorzienende landbouw en visserij. Door globalisering worden grootschalige projecten in toenemende mate beheerd door multinationale ondernemingen, bijvoorbeeld in de mijnbouw, olie en gas industrie, de intensieve landbouw en veeteelt, de voedselindustrie, en in (gerelateerde) lineaire projecten zoals spoor- en snelwegen. Voor internationale ondernemingen hebben financiële instituties, zoals de *International Finance Corporation* van de Wereld Bank, uitgebreide milieu en sociale standaarden opgezet die investeerders moeten aanzetten om de negatieve effecten van hun projecten in kaart te brengen, te vermijden en te mitigeren, en daarbij de levensstandaarden van getroffen bevolkingsgroepen te herstellen en te verbeteren.

Dit proefschrift is gericht op het analyseren van de mensenrechten effecten van grootschalige projecten op lokale bewoners en gemeenschappen. Hierbij is het onderzoek gericht op de implementatie van procedures rondom landonteigening, compensatie en het herstellen en verbeteren van de levensstandaarden van getroffen lokale bewoners en hun gemeenschappen. Het onderzoek heeft plaatsgevonden in Mozambique, waar ik deelnam aan de activiteiten van

het personeel in twee multinationale mijnbouw ondernemingen. Het veldwerk hield in dat ik voor twee periodes van ongeveer vijf maanden intern in de mijnbouw bedrijven verbleef en hun dagelijkse activiteiten volgde rondom de compensatie van lokale bewoners. De eerste studie vond plaats in 2013 en betrof een open-pit kolenmijn, en de tweede studie vond plaats in 2015 en betrof de bouw van een 900 kilometer lange spoorweg en de aanleg van een nieuwe haven. Mijn aanwezigheid in deze projecten vormde een unieke mogelijkheid voor academisch onderzoek, met name omdat weinig onderzoekers toegang krijgen tot de interne organisatie van mijnbouw bedrijven. Er is weinig over bekend in hoeverre bedrijfs personeel respect voor mensenrechten integreren in hun procedures en dagelijkse werkzaamheden, en wat hun ervaringen zijn in de praktijk van landonteigening en compensatieprocessen.

Bijdrage van dit onderzoek

Dit proefschrift heeft als doel het beantwoorden van de volgende onderzoeksvraag: *hoe kan de implementatie van de verantwoordelijkheid van bedrijven om mensenrechten te respecteren, worden verbeterd in projecten, zodat de duurzaamheid van lokale gemeenschappen wordt verbeterd?* De analyse en de beleidsaanbevelingen in dit proefschrift dragen bij aan de kennis op het gebied van *Community Relations Practice, Social Impact Assessment, Business and Human Rights, Displacement and Resettlement*, en *Project Management*. De interdisciplinaire aanpak van dit onderzoek laat zien dat ‘mensenrechten en bedrijfsvoering’ veel raakvlakken heeft met andere vakgebieden, waarin mensenrechten een belangrijk thema vormt. Echter, de discipline ‘mensenrechten en bedrijfsvoering’ wordt vooral benaderd vanuit rechtskundig perspectief. Deze benadering geeft beperkt weer hoe en waarom mensenrechten schendingen door bedrijven ontstaan. Daarnaast worden binnen dit kader weinig structurele oplossingen voorgedragen voor de naleving van de verantwoordelijkheid van bedrijven om mensenrechten te respecteren. Dit onderzoek erkent het rechtskundig perspectief, maar geeft een kijk op het mensenrechten vraagstuk vanuit ervaringen in het bedrijfsleven, en vanuit de literatuur van *Community Relations Practice, Displacement and Resettlement* en *Project Management*. Op basis van kwalitatief onderzoek in de twee projecten (observaties, 37 diepte-interviews, participatie in interne bijeenkomsten en met de getroffen bewoners) zijn twee kaders voor het verbeteren van mensenrechten bescherming door bedrijven ontwikkeld, namelijk *A Human Rights Based Approach to Resettlement*, en *The Human Rights Sphere*. Op basis van de dataverzameling en analyse in de kolenmijn en spoorweg projecten, omschrijven deze kaders hoe mensenrechten standaarden beter kunnen worden geïntegreerd in bestaande ‘impact management’ en compensatie procedures van grootschalige projecten.

Proefschrift opzet

Ik heb gekozen voor een inductieve aanpak, waarbij ik eerst mijn data heb verzameld in de twee projecten. Op basis hiervan twee kaders heb ontwikkeld voor het verbeteren van mensenrechten bescherming door bedrijven. In hoofdstuk 2 worden de twee projecten en de onderzoeksmethode toegelicht. Vervolgens worden de resultaten van de observaties en diepte-interviews gepresenteerd. Uit de data analyse blijkt dat beide bedrijven niet voldoende waren voorbereid op het omgaan met de sociale gevolgen van de grootschalige projecten. Beide

bedrijven beschikten bij de aankoop en start van de bouw van het project over weinig financiële middelen en professionele kennis op het gebied van onteigening, compensatie en verplaatsing van bewoners en dorpen. De implementatie van deze procedures was problematisch vooral omdat er geen of onvoldoende tijd was genomen om de ernstige sociale gevolgen adequaat te verzachten of te vermijden voorafgaand aan de bouw van het project. Buiten dat was er in eerste instantie te weinig gekwalificeerd personeel aangenomen.

Met name in het project van de spoorweg, vond uitzetting en compensatie gelijktijdig met de bouw plaats, daarom moesten veel getroffen bewoners snel (binnen 10 dagen) worden geïnformeerd, gecompenseerd en gevraagd hun eigendommen te verlaten. Dit zorgde voor een hoge tijdsdruk en stress bij zowel de getroffen en als het personeel, wat resulteerde in fouten in het berekenen en betalen van de compensatie, een vertraging in de bouw van nieuwe huizen voor de getroffen en gebrek aan effectieve projecten voor herstel van de levensstandaard. In de literatuur van *Community Relations Practice* worden deze verschijnselen als kenmerkend beschouwd voor de industrie.

In de onderzochte projecten werden twee mensenrechten principes, namelijk adequate toegang tot informatie en betekenisvolle participatie, niet voldoende geïmplementeerd. De verantwoordelijkheid van bedrijven om mensenrechten te respecteren houdt in dat toegang tot informatie voor alle getroffen bewoners en hun participatie in het proces fundamenteel is voor het herstel van de levensstandaarden. Het bedrijfspersoneel had hier in de praktijk niet voldoende tijd en aandacht voor. Door gebrek aan informatie en participatie mogelijkheden in het proces ontstond er wantrouwen vanuit de getroffen bewoners jegens het bedrijf en de overheid, waardoor er verzet onstond in het proces van compensatie, uitzetting, en verhuizing. Dit heeft in beide projecten geleid tot protesten en project blokkades door getroffen bewoners. Op basis van de literatuur en het veldwerk concludeer ik dat bedrijven weliswaar bewust zijn van de technische aspecten zoals het bouwen van nieuwe huizen, sociale voorzieningen en infrastructuur, maar tekort schieten in het sociale aspect ervan.

Het derde hoofdstuk bespreekt een specifiek mensenrechten onderwerp, namelijk het herstellen en verbeteren van de toegang tot publieke voorzieningen in geval van onvrijwillige uitzetting. Het mensenrechtenprincipe luidt dat getroffen en niet dakloos mogen raken en dat ze gelijke of verbeterde toegang moeten hebben tot o.a. werk, gezondheidszorg en onderwijs. In Mozambique stelt de overheid dat de ondernemer van het project verantwoordelijk is voor het herstellen van de levensstandaard van uitgezette bewoners. Dit betekent dat bedrijven zorg moeten dragen voor alle kosten en de implementatie van processen rondom het informeren, compenseren, verplaatsen en herstellen van getroffen gemeenschappen. In het eerste project, de kolenmijn, werd een dorp van ongeveer 2500 inwoners verplaatst naar een nieuw gebouwd dorp ongeveer 60 kilometer van hun oorspronkelijke locatie. Dit betekende dat naast huizen, ook een school, een ziekenhuis, een watervoorziening, landbouw voorzieningen, en infrastructuur moest worden aangelegd.

De uitdagingen die werden ervaren door het bedrijfspersoneel hadden te maken met de beslissing rondom de nieuwe locatie voor het verplaatste dorp. De keuze voor de nieuwe locatie was voornamelijk genomen door de lokale overheid. De lokale bewoners waren voor

hun levensonderhoud afhankelijk van de rivier die vlak langs hun dorp stroomde voor landbouw, drinkwater, visserij en andere economische activiteiten. Ondanks dat de getroffen bewoners in hun nieuwe dorp verbeterde kwaliteit van huizen, school en kliniek kregen, waren ze in de basis van hun levensbehoeften geschonden. In hun nieuwe lokatie was er namelijk geen betrouwbare toegang tot water wat nodig was voor de landbouw. Als oplossing voor dit probleem bouwde het bedrijf elektronische waterpompen en ook werden er verschillende alternatieven aangeboden voor het herstellen van de levensstandaard. Het personeel bedacht projecten voor lokale bewoners om vee te fokken en verkopen. Deze projecten werden echter niet succesvol en de bewoners ervoeren dus geen herstel van inkomen. Daarnaast was een informele economische activiteit, namelijk het maken van bakstenen, verloren gegaan omdat bewoners daarvoor de modderige oevers van de rivier nodig hadden. De verbeterde publieke voorzieningen in de nieuwe locatie waren kostbaar in onderhoud en het bedrijfspersoneel verwachtte dat de lokale overheid de kosten in de toekomst hiervoor niet zou kunnen opbrengen.

Uit de mensenrechten literatuur blijkt dat mensenrechten specialisten zich weinig bezig houden met project-gerelateerde processen van onteigening, compensatie en verplaatsing. Mensenrechten specialisten richten zich van oudsher op oorlog gerelateerde verplaatsingen. Gezien het grote en groeiende aantal grootschalige projecten wereldwijd en de negatieve gevolgen voor lokale bewoners, is het noodzakelijk dat er meer duidelijkheid komt over welke mensenrechten principes kunnen worden toegepast in deze situaties van onvrijwillige uitzetting. In het vierde hoofdstuk geef ik een overzicht van alle mensenrechten standaarden die relevant zijn wanneer mensen onvrijwillig worden verplaatst ten gunste van de uitvoering van projecten. Dit kader heet *A Human Rights Based Approach to Resettlement*. Voor een bedrijf dat moet voldoen aan de verantwoordelijkheid om mensenrechten te respecteren, zal *A Human Rights Based Approach to Resettlement* van belang zijn, omdat het uitgebreid toelicht welke mensenrechten standaarden moeten worden geïntegreerd in bestaande bedrijfsprocedures. Daarnaast benadrukt dit kader dat bedrijven effectieve procedures voorafgaand aan het project moeten opzetten rondom kwetsbare groepen zoals ouderen, kinderen en één-ouder gezinnen.

Het vijfde hoofdstuk trekt het mensenrechten kader breder naar hoe bedrijven binnen al hun processen en afdelingen mensenrechten beter kunnen integreren. De *Guiding Principles* verwacht dat bedrijven *human rights due diligence* uitvoeren om hun mensenrechten risico's in kaart te brengen, deze te bestrijden en vervolgens deze resultaten publiekelijk te rapporteren. Mijn voorgestelde kader *the Human Rights Sphere* legt uit hoe bedrijven deze risico's in kaart kunnen brengen om deze vervolgens op meerdere afdelingen af te stemmen. Inmiddels volgen bedrijven een wettelijke procedure met betrekking tot milieu en/of sociale effecten rapportage welke voorafgaand aan een project voorstel moet worden goedgekeurd door de overheid. Voor het verbeteren van respect voor mensenrechten is het van belang dat mensenrechten risico's ook in deze rapportages worden mee genomen. De internationale Impact Assessment organisatie heeft, na de acceptatie van de *Guiding Principles*, mensenrechten als onderdeel opgenomen. Echter in de praktijk zijn er nog veel vragen over de toegevoegde waarde van mensenrechten. Het probleem ligt vaak niet in het opstellen van de

milieu en sociale effecten rapportages, maar in de implementatie ervan door het verantwoordelijke bedrijfspersoneel en de actieve controle door de overheid.

Hoofdstuk zes is de conclusie van het proefschrift en reflecteert op het hoe en waarom van het ontstaan van mensenrechtenschendingen in de twee projecten. Beide bedrijven hebben een mensenrechten beleid en mensenrechten personeel in dienst. Daarnaast, na een chaotische start van het project, hebben beiden maatregelen getroffen om de mensenrechten effecten beter aan te pakken. De Project Management literatuur laat zien dat gebreken in projecten van alle tijden zijn en kunnen worden gerelateerd aan verschillende afdelingen binnen organisaties. De bouw van projecten kent net zo veel technische als sociale uitdagingen. Technische mankementen worden door de Project Management literatuur met name toegeschreven aan gebrek aan kundig en gemotiveerd personeel. Grootschalige projecten brengen aanzienlijke technische, financiële en sociale risico's met zich mee. De bouw en start van deze projecten worden vrijwel standaard gekenmerkt door organisationele chaos, tijdsdruk, overmoed en de onervarenheid van het personeel. De literatuur concludeert dat voor veel technisch personeel sprake is van een *'learning on the job approach'* en dat er daarnaast weinig aandacht wordt besteed aan de nodige *'soft skills'*. Ik concludeer hieruit dat de gevolgen desastreus kunnen zijn voor omwonenden die getroffen worden door uitzetting omdat ze te maken krijgen met onervarenheid van en/of onethisch gedrag van betrokken personeel, onduidelijke informatie, geen betekenisvolle participatie, en gebrekkige klachten procedures.

Tot slot bespreekt het laatste hoofdstuk de beperkingen in het respecteren van de mensenrechten in geval van onvrijwillige uitzetting met name wanneer het bevolkingsgroepen betreft die afhankelijk zijn van zelfvoorzienende landbouw en/of visserij. Bedrijven en overheden zullen aantoonbaar meer moeten gaan investeren in het actief betrekken en voorbereiden van getroffen bewoners om zelfvoorzienende activiteiten aan te passen wanneer toegang tot landbouwgrond en wateren niet meer mogelijk is. Het proefschrift legt een aantal aanbevelingen voor gericht op beleidsmakers, bedrijfspersoneel en het onderwijs. Bedrijven moeten voor de bouw van het project getroffen bewoners kunnen garanderen dat hun levensstandaard wordt hersteld. Deze garantie betreft niet alleen de bouw van nieuwe huizen en de aanleg van publieke infrastructuur, maar ook de implementatie van het participatie proces waarin bewoners continue worden geïnformeerd en kwetsbare groepen specifiek aandacht krijgen. Hiervoor dient gekwalificeerd personeel ingezet te worden. Om de *Guiding Principles* beter te implementeren zouden nationale mensenrechten instituten een onafhankelijke en mogelijk juridische positie moeten kunnen innemen op het gebied van project-gerelateerde uitzettingen. Op dit moment hebben deze instituten een te beperkte rol hierin. Gezien de tonemende maatschappelijk druk om sociaal en verantwoord te ondernemen, is het wenselijk dat studenten in business management, economie, bedrijfsrecht, en gerelateerde studies breder worden opgeleid. De sociale aspecten van bedrijfsvoering inclusief mensenrechten, moeten tijdens bachelor en master studies al aandacht krijgen. Alleen als huidige studenten leren hoe ondernemingen sociaal kunnen opereren, kunnen we daadwerkelijk een duurzamere wereld creëren.

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Sincerely, Lidewij

Business and Human Rights

Addressing the challenges of respecting, protecting and fulfilling the human rights of project-affected peoples

The construction of large-scale projects is characterized by significant human rights risks. This study analyses company actions in addressing human rights impacts in relation to displacement and resettlement. The researcher was based in two mining companies in Mozambique, where she analysed the implementation of compensation, resettlement and livelihood restoration procedures. Chapter 2 discusses the results from observations and in-depth interviews with staff members. Many impacts occurred because of a lack of early-on awareness of the human rights risks of the project. The implementation of process rights, i.e. adequate access to information and meaningful participation was inadequate. Community relations staff were under high pressure from construction departments to quickly compensate and relocate project-affected peoples. Chapter 3 considers the restoration of access to public services. Despite provision of improved replacement housing and access to public services, communities experienced increased food and water insecurity and lost economic opportunities. Chapter 4 proposes a Human Rights Based Approach to Resettlement. This tool outlines the relevant human rights principles in resettlement situations that companies should integrate in their procedures. Chapter 5 presents the Human Rights Sphere, a framework that shows how respect for human rights should become integrated into impact identification and management of project sites. To achieve more socially sustainable communities, the management of social and human rights impacts of economic developments need to be improved early on. Much more time and resources will need to be invested in early planning and implementation of full access to information and meaningful participation.

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